MODERN GOVERNMENTS

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BY
B. M. SHARMA, D. LITT.

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(Thoroughly revised and enlarged)

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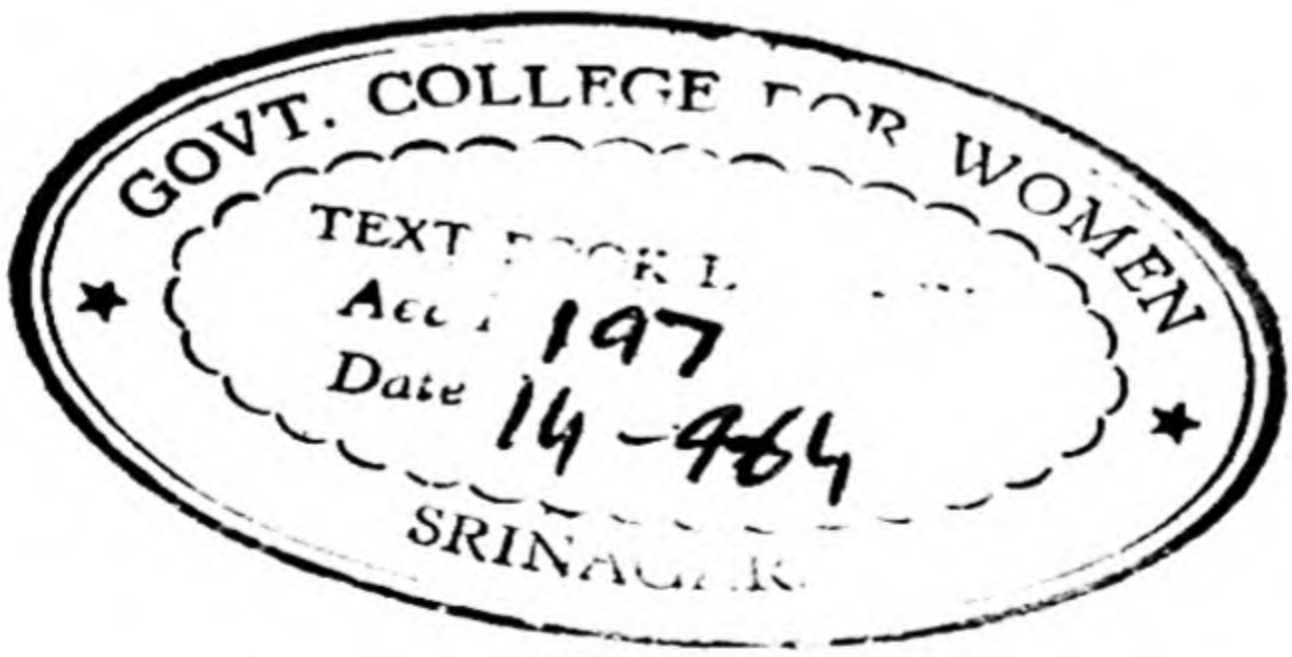

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PREFACE

Now that the task of managing our public affairs has happily come on our own shoulders, it is natural that Indians are now keenly anxious to study the methods of government in important countries. The Indian Constitution itself is an outcome of the intensive study of various leading constitutions, and full use of the experience of others in the mode and practice of government has been made. The selection of the constitutions in this volume has been guided by the desire to appraise the reader with all the different forms of governments (democratic, totalitarian, communistic, parliamentary, presidential, unitary and federal) in existence, at the same time avoiding repetition. The system of government in Great Britain has been described in greater detail. It is because the British system has presented the skeleton structure on which our own constitution has been cast; it is the mother of quite a few constitutions of other important countries such as the U. S. A., Canada, Australia, the Union of South Africa, Burma, etc. In this revised edition one new chapter on the growth and sovereignty of parliament has been added, besides adding details about conventions in the British Constitution, and the distinction between the King and the Crown. The development of the Commonwealth has been given in greater detail. Practically every chapter has been revised so as to make the matter more intelligible and useful to all readers.

Due consideration has been given to describing the constitutional evolution of different forms as it is very helpful in arriving at a true understanding of their nature and form. A new chapter on the government of the People's Republic of China has been added. The text of the Chinese Constitution of 1954 appears as Appendix C.

Revolutionary changes are taking place and constitutional experiments are being tried on an extensive scale throughout the world. That which was modern yesterday has become antiquated to-day. But to be able to understand the future it is imperative to understand the past and the present. The limitations of democracy are becoming increasingly clear. Even the Fourth Republic of France has toppled due to French failure to establish cabinet stability. Pakistan which had attempted to establish parliamentary democracy has,

after eleven years of rule under cabinet instability, taken to military dictatorship. The abolition of colonialism has brought new problems of democracy to the fore-front. African States are passing through the birth pangs of self-government.

I have tried to revise the facts and figures and to bring them up-to-date and have revised the portions needing revision. I shall be grateful to those who will make constructive criticism to enable me to make the book more useful. I hope this edition will prove helpful to teachers, students and publicists interested in the study of political systems of the world.

I am grateful to my friend and former pupil Dr. L. P. Choudhry, Assistant Professor of Political Science in the Lucknow University, for helpful suggestions, and for preparing the Index which is a very tiresome task.

Lucknow,
VIJAYA DASHAMI,
22nd October, 1958.

B. M. S.

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BOOK ONE

Chapter 1. Constitutional Government.
„ 2. The Theory of Federalism.
„ 3. Forms and Functions of Government.

1

CONSTITUTIONAL GOVERNMENT

The ideally best form of government, it is scarcely necessary to say, does not mean one which is practicable or eligible in all states of civilisation, but the one which, in the circumstances in which it is practicable and eligible, is attended with the greatest amount of beneficial consequences, immediate and prospective. A completely popular government is the only polity which can make out any claim to this character.

—J. S. MILL

State as the Highest Form of Society. Man has given expression to many aspects of his life through the setting up of various associations. But the greatest achievement of human ingenuity is, without doubt, the organisation of society into a political community. The process has involved experimentation of a varied character, beginning with the nomadic hordes and passing through the pastoral tribe, the family and the group, till the emergence of the modern political society. It is in the life in this society that the individual has been enabled to realise his best self, at the same time, promoting the interests of those to whom he finds himself bound by ties of blood, sentiment, thought and common action. Such a society, technically called the *State*, alone can create conditions necessary for the evolution of civilisation, the development of science, progress of arts, propounding and expounding of doctrines and building up of what is signified by the term *progressive man.*

Mankind has passed through a long series of alternate successes and failures before it reached the present (coveted ?) position. The pendulum of progress has swung backward and forward; in other words, there has been a long series of actions and reactions to complete the tale of human behaviour and progress. Civilisation[1] is an arti-

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[1] Carlyle said : "The three great elements of modern civilisation are gunpowder, printing and the Protestant religion."

ficial burden man had to shoulder in order to survive the struggle for existence. Viewed in this sense culture is human history writ large.

This is the moral of all human tales
'T is but the same rehearsal of the past.
First Freedom and then glory, when that fails
Wealth, vice, corruption—barbarism at last !
And history with all her volumes vast
Hath but one page . . . . . .

Historical Basis of the State. Any study of the institutional development of mankind must, therefore, be conditioned by the historical setting behind it. But the complexity of historical events, it is true, is such that the cultural life of any people and of any tribe can be understood only as an outgrowth of those unique conditions and environments under which it has lived. Any attempt, therefore, to explain the details of a people's behaviour on merely psychological grounds can never give an adequate idea of the cultural life as it exists to-day, no matter how intimately we may be acquainted with the reactions of the individual to his social and economic environments. Moreover, the diversity of these environments in different parts of the globe explains, to a large extent, if not completely, the variety of institutions and principles, methods and theories which each people for themselves have chosen to express their way of life.

Constitution Indicates the Pattern of Society. The highest common factor of these institutions in all States is the existence in each State of a certain power-relationship between its individuals and associated institutions. All this is expressed through the constitution which embodies not merely the fundamentals of the institutions but also the frame-work of the political system, the government. The different stages of human history are marked also by the variety of the prevalent governmental systems. The striking difference between the process of government in former times and the present, is that in former times participation in government was confined to a very small fraction of the total number of individuals and groups subject to the authority of the State. While to-day the tendency is to extend the right of participation in government to every individual of mature years and to almost every conceivable group or class of people.

It is clear, therefore, that every State chooses for itself the kind of constitution which is motivated by the geo-economic and the socio-political environments. These environments being dissimilar in

different parts of the world, constitutions too take different shapes. The content of a successful constitution should, therefore, be articulated to accepted principles of the existing social needs and standards, for the State is but one particular feature of society, with only a larger ambit for existence and growth. Society being dynamic, its needs and standards change from era to era; the constitution, too, must be adaptable to these changes brought about by geographical, economic, social and cultural factors. All this accounts for the differences in the political systems or types of government of the different peoples inhabiting the different parts of the world. The prosperity, then, of a people depends largely upon the nature of the government it has, for, as Burke said: 'Government is a contrivance of human wisdom to provide for human wants. Men have a right that these wants should be provided for by this wisdom'. In this definition the most significant term is human wisdom, for no government is worthwhile if it is not founded on the experience of the wise or articulated to the needs of the governed. Cousin rightly remarked: 'You can only govern men by serving them. The rule is without exception.' Governing by serving may appear to be a contradiction in terms, but it undoubtedly represents the modern conception of the functions of a government. This happy blending is difficult of actual or potential realisation until the relationship between the rulers and the ruled is solidly based on stable principles and firm foundations. It is not enough to be content with a good government at a particular time. What is needed is not merely the way in which the government is conducted. Pope's dictum:

'For forms of government let fools contest
Whate'r is best administered is best.'

may be rejected outright. The form as well as the personnel of government is of as great importance as the end it has to serve. Francis Osborne's advice (to his son), *viz.*, 'To a wise man it is indifferent what card is trumps. The game may be played as fair under clubs as diamonds. If we are to be fettered, it is folly to be troubled whether our fetters consist of many links or but one,' is full of flaws. On the other hand, we are more inclined to accept what Ovid said: 'Spare the spurs, boy, and hold the reins more firmly.' This at once postulates an organisation in which the citizens must control, in the ultimate resort, the governmental machinery. This truth has been realised now and that is why every government of to-day rests upon a constitution framed by the people's representatives in the name of the people.

Constitution Defined. According to Lord Bryce, 'the constitu-

tion of a State or nation consists of those of its rules or laws which determine the form of its government and the respective rights and duties of it towards citizens and of the citizens towards the government.' Paley defines *Constitution* thus: "By the constitution of a country is meant so much of its law as relates to the designation and form of the legislature, the rights and functions of the several parts of the legislative body; the construction, office and jurisdiction of courts of justice. The constitution is one principal division, section or title of the code of public laws, distinguished from the rest only by the superior importance of the subject to which it treats.' This definition is only an amplification of what is *constitutional law* which according to Dicey 'includes all rules which define the members of the sovereign power, all rules which regulate the relation of such members to each other, or which determine the mode in which the sovereign power or the members thereof, exercise their authority.' According to Austin a constitution is that 'which fixes the structure of the supreme government.' Gilchrist defines a constitution to be 'that body of rules or laws, written or unwritten, which determines the organisation of government, the distribution of powers to the various organs of government and the general principles on which these powers are to be exercised.' Lieber defines constitutions as "the assemblage of those publicly acknowledged principles which are deemed fundamental to the government of a people. They refer either to the relation in which the citizen stands to the state at large, and consequently, to the government or to the proper delineation of the various spheres of authority. They may be collected, and may have been pronounced at a particular date, such as the constitution of the United States; or the fundamental principles may be scattered in acknowledged usages and precedents, in various charters, privileges, bills of rights, laws, decisions of courts, ... as the constitution of Great Britain is."

We thus see that the content of a constitution is the picture of the fundamental political institutions through which the society lives its life. In the picture a student can see only the broad features and not the finer details; it presents the contour and not the minute specifications. To understand the latter we have to study the social environments, the economic life, the cultural heritage and the historical background of the nation.

Necessity of a Constitution. The long history of mankind is characterised by the special features of each age or epoch. In the dark past about which the modern archæologist is now trying to give us

partial knowledge, we hardly find any set rules or laws which man's reason could explain in relation to his creative genius. That was a time in which the bludgeon ruled; the law of the jungle prevailed. Survival of the fittest, an important biological principle, was without doubt the only principle at work. In those days men rather than laws governed; the rule was obeyed as man alone could keep the different and warring sections of the community under his control. With the development of man's intellect and the lapse of centuries which contained the slow transformation of the barbarian into the rational man, there was a distinct move towards a new order. This reversed the process and laws, rather than men, began to control, and besides the ruler, other parts of the community began to participate in the organised political life. This was the dawn of constitutional government and the emergence of an understandable system.

History of Constitution. Among Europeans the ancient Greek philosophers were the first to direct their attention towards a discussion of the forms and kinds of political society. Both Plato and Aristotle, but more particularly the latter who has been acclaimed as the founder of political science, discussed in detail the groupings through which men could live as organised communities. Some kind of laws or rules, they asserted, were necessary for a State. For over fifteen centuries thereafter attempts were made in Europe at evolving stable organisations of men, each with a cultural or social harmony of its own. With the disruption of feudal society and the rise of forces that threatened to overthrow the autocracy of absolute national monarchies the movement for a settled life based on known or knowable rules and laws received a new impetus.

In Europe, England was the first country to circumvent the rights of the subjects. The Kings who forced their rule over the subjects provoked protests from the richer and upper classes at first, and from the common people later. Constitutional Government thus originated for the first time in England in order to safeguard the rights of the common people and curb the absolute powers of the rulers (whether Kings or their ministers). Thereafter it was adopted on the continent, in America, and other parts of the world.

Constitutional government, then, is a form of government in which laws rather than men control and which, to a greater or lesser degree, is popular in character in that it admits, to a greater or lesser degree, of the participation of the important elements in the State's life.

In England. 'Constitution' was first employed in England to designate certain fundamental customs or ancient usages declared in some form by the English King with the assent of his Great Council. Thus Henry II, in 1164, issued a set of rules governing the relations between the secular and ecclesiastical courts and these became known as the constitutions of *Clarendon*. Ostensibly they were not new rules, but merely the old usages put into written form and formally declared. So it was with the provisions which the barons wrung from King John in 1215. On a much broader scale Magna Carta enumerated the various fundamental customs of the realm. It was a document of definition, not of legislation, and might just as well have been called the constitution of Runnymede. This surrender on the part of the king marked the beginning of constitutional government in Europe, that is, of government based upon a definite understanding among the parties concerned in it. But these *constitutions* and *charter* did not embody all the principles upon which the government of England rested during the succeeding centuries. From time to time they were supplemented by successive confirmations of the Great Charter (the Magna Carta), by the Provisions of Oxford (1258) and by a series of great statutes such as the Statute of Mortmain (1279), Winchester (1285) and Praemunire (1353). Later came the Agreement of the People, drawn up by Cromwell's soldiers in 1647 and the Instrument of Government issued by the Protector in 1653. This Instrument of Government was a formal written constitution in all its essentials, for it set forth in some detail the powers of the executive and the legislature. It established an English republic with legislative power vested in a single chamber and a President (Lord Protector) with a life tenure. But Parliament never accepted the Instrument as legal, and only four years after Cromwell's death, when monarchy was restored, it merely decreed (in 1660) that the government of England should again be conducted 'according to the ancient and fundamental laws of the Kingdom'. Thus ended the first and only experience of England under a constitution of this type and this English Constitution of 1653 is said to be the earliest written constitution of modern Europe.

In America. On arriving at the conclusion, (in 1776), that a written constitution was necessary, the Americans were just following the example of their English kinsmen, who had drawn up the first written constitution of modern Europe in 1653. The American colonies caught the idea involved in the Instrument of Government

and utilised it. During the latter part of the 17th century they revived the practice of using the term constitution to designate their own fundamental laws, especially the one relating to the organisation of their government. And after the Declaration of Independence all the thirteen States utilised the word 'constitution' to signify the new instruments of government which they set up. In other words, America borrowed the term from England, gave it a more precise meaning and by her example during the past 175 years she has been largely responsible for its extension throughout the world. We may say, then, that America is the birth-place of the written constitution. The constitution of South Carolina was drafted by John Locke and that of Rhode Island by Roger Williams.

In Europe. The next attempt to frame a written constitution was that made by France in 1791. This constitution was in operation for less than a year, but was followed in that country by a series of written constitutions, which appeared with great rapidity from 1792 to 1815. A number of smaller German states adopted written constitutions between 1815 and 1830. This early constitutional movement in Germany would appear to have been one of the results of the French Revolution. In 1830, the newly established kingdom of Belgium also framed a written constitution. The independence of the South American colonies of Spain also, about that time, brought constitutional government and written constitution in its train. Other States in Europe adopted written constitutions particularly as a result of the revolutionary movement of 1848. Among these may be mentioned Prussia and Italy. The movement for national unity which is to be noticed in Europe about 1870, and which resulted in the consolidation of Germany, also brought with it a number of written constitutions, among which may be mentioned those of Austria-Hungary and the German Empire.

Elsewhere. Nineteen years later a written constitution was provided for Japan, when that Empire joined, in 1889, the ranks of the constitutionally governed States. Within the first few years after World War I, Turkey, Persia, China, Egypt and Iraq also adopted written constitutions particularly as a result of the right of self-determination. Siam in 1932 was an important addition to the list. World War II further strengthened the right of peoples to shape their destiny; colonialism was discarded; protectorates were freed. France, Germany and Japan adopted new and more democratic constitutions. The Republic of India adopted her constitution in November, 1949,

and became a Republic on January 26, 1950.

We find, therefore, that the movement originating in the United States of America in 1776 has now spread to all the five continents. It is not, however, usually remembered that the constitution of the U. S. A., which had been adopted in 1789 is, apart from a few American State constitutions, the oldest existing written constitution, completing more than a century and a half of its existence, with only 22 amendments, not all of which are major.

Classification of Constitutions. The distinction between written and unwritten constitutions is of little significance. It is more accurate to call them 'enacted' and 'evolved' constitutions. To say that a constitution is unwritten suggests that it is indefinite in its provisions, which the British constitution is not. Its requirements are in some cases more definite than are the corresponding provisions of even written constitutions in some other countries. An evolved constitution, like that of Britain, has its origin in custom as contrasted with the one which appeared full grown from the hands of some assembly or ruler. The constitutions of Great Britain and of pre-1914 Hungary would belong to the class of 'evolved constitutions.' All other constitutions belong to the 'enacted class.' But this distinction between *evolved* and *enacted* constitutions is by no means a sharp one. Even an evolved constitution is partly made up of enactments. Magna Carta of 1215 in England and the Golden Bull of 1222 in Hungary were, both of them, enactments, yet they formed part and parcel of the evolved constitution in those respective countries. On the other hand, an enacted constitution is never an absolutely spontaneous creation. It is not struck off at a specific date by a designated group of framers or fathers. The constitution of the Republic of India is the best example; it has borrowed from the experience of other democratic countries like England, the United States and France, valuable principles, objectives, method and machinery of government. Even the constitution of the U. S. could not have been framed in 1787 as it was then framed, had there not been a body of political usages available for use by the Philadelphia Convention. It must be borne in mind, moreover, that from the moment a constitution is enacted it begins to evolve. In time there will be imposed upon the enacted document a great superstructure of custom and precedent, all of it the result of this growth. No constitution, therefore, is wholly the product of evolution or of enactment. Every constitution laps over into both categories.

Rigid or Flexible. It is also customary to classify constitutions

as *rigid* and *flexible* according to the difficulty or ease with which amendments may be made. The constitution of the United States of America is said to be a rigid constitution because the process by which formal amendments can be effected is longer, more elaborate and more difficult than in any other country. The constitutions of Great Britain, Italy and Hungary (till 1918) are examples of flexible constitutions due to their susceptibility to easy and frequent changes made in a simple way. In such countries it is, technically speaking, no more difficult to amend the constitution than to enact an ordinary law. Finally, there are constitutions which fall into a class between these two, namely, the ones which are amendable by a special procedure which is more difficult than the ordinary process of law-making, but is nevertheless, within the competence of the national legislature and does not require the participation of any outside authority. Examples of this type were the constitutions of The Third French Republic, and of Germany and Austria till 1918. The constitution of the Republic of India is partly rigid and partly flexible.

Rigidity is Relative. Though the distinction between rigid and flexible constitutions is of some importance, there is danger of laying too much emphasis on it. In actual practice, it has been found that even written constitutions like that of the United States of America are not nearly so rigid and inflexible as some would seem to think they are. The remark is attributed to a President of the U. S., that the constitution of U. S., is to the country what a coat too small in size is to a man. If he buttons it up in front, he splits it open behind. Such a characterisation of the American constitution is, however, hardly justified by an examination of the constitutional development of the United States of America. The process of formal amendment is not the only agency through which an enacted constitution can be brought into step with the times. It is merely one of several agencies and by no means the most important among these. Great changes take place in a constitution as the result of usage and judicial interpretation, thus obviating in many cases the need for utilising the prescribed mechanism of amendment. The constitution of the U. S. has had only twenty-two formal amendments added to it since 1789, but by judicial interpretation it has been amended on innumerable occasions. Viewed from this angle, it is no more rigid than the constitution of Great Britain. No vigorous, progressive nation ever tolerates a rigid constitution. If the methods of formal amendment prove too cumbersome, it will find some other agency of change. The U. S., with the

help of the Supreme Court, found it a century ago. Constitutional rigidity is not a matter of law, but of popular temperament. A people inclined to conservatism, like the British and the Swiss, will change their constitutions slowly and cautiously, no matter how easy the process of change may be.

Written Constitution only a Plan. In other words, a written constitution is only a proposed plan of government set forth in one document. It does not necessarily exhibit the actual form of government of the country. It is like the rules of a game. If the game as actually played is not played according to the rules, then the rules as set forth do not give an accurate idea of the game played.

So if those living and acting under a written constitution play the political game according to the rules and, it may perhaps be said, they seldom do this for a long time, the written constitution may give a fair idea of the actual governmental system. If, however, they do not thus play the political game, then the student of government must, if he would know the real political system, find out how the political game is actually played. Take an example like the party system. It does not find any place in the written American constitution, nor in the unwritten English constitution, yet every student of government knows what prominent part it plays in the actual working of the American and British systems of government. What we need from students of comparative government is more attention to actual constitutional development and the political psychology of the people and less attention to its purely formal aspects.

Extreme Rigidity is Bad. It is, however, unwise to make the process of amending a written constitution too difficult. For the conditions in almost every country are continually changing, and a constitution, if it is to serve the needs of the people living under it, must change as conditions change. If provision for a reasonably easy amendment is not made, either the constitution will become out of harmony with the conditions as they exist, or else changes will be made in the actual system of government by a strained interpretation of the constitution. This was probably what the American President, who has been quoted above, had in mind when he compared the constitution of the U. S., to a coat that was too tight. Extreme rigidity of a constitution would mean that its framers laid down in almost unalterable forms and institutions the means whereby future generations should govern or regulate their conduct. This will mean denial of freedom to grow or progress with time. Tom

Paine rightly condemns such an attitude when he writes in his *Rights of Man*: "The vanity and presumption of governing beyond the grave is the most ridiculous and insolent of all tyrannies. It is the living and not the dead that are to be accommodated. When a man ceases to be, his power and his wants cease with him; and having no longer any participation in the concerns of this world, he has no longer any authority in directing how its government shall be organised and how administered." Changeability in constitution is, therefore, essential for a progressive people.

If, therefore, we sum up the case for and against the written and the so-called rigid constitutions, we are probably justified in saying that almost universal experience of the European world is in favour of this method of determining the principles of constitutional government. The argument of inflexibility and rigidity, which is often used against it, is justified only partially and only to the extent to which the methods of amending the constitution are made unreasonably difficult.

Popular Control over Constitution. The doctrine of popular sovereignty has had for one of its effects in the U. S. the submission of the original states' constitutions as well as amendments thereto to the voters of the states. Such submission to the people in the case of constitutional amendments is not required by the U. S. constitution nor by most of the written constitutions of the world. The ordinary method of amendment is through legislation, but with the condition of a greater than ordinary majority vote and the observance of special formalities. Thus in France an amendment of the constitutional laws of 1875 was made as follows:

Each of the chambers of the legislature decided by a majority of its members that an amendment was necessary. After both chambers had thus separately reached this decision, they united in a joint assembly. The decision of this joint assembly for amendment had to be made by a majority of the members forming the assembly.

If we judge from the experience of European nations, we may conclude that every country having constitutional government should have a written constitution, and that the constitution should be amendable in some such way as were the French constitutional laws of 1875.

Constitutional Government Defined. Every government of to-day rests upon a constitution. *What do* we mean by constitutional government? How does it differ from the other forms of government

which the history of the world exhibits ? What are the ear-marks by which we may know it ? By constitutional government is meant, in the first place, a form of government which, as opposed to what may be called personal government, is based not on the temporary caprice or whim of those who possess political power, but which, on the contrary, is carried on in accordance with rules so clearly defined and so generally accepted as effectively to control the actions of public officers. Constitutional government is, then, a government of laws and not a government of men. The fact that constitutional government is a government of laws and not of men, has necessarily involved the formulation of the rules or laws which are to control the actions of government officers. These rules or laws constitute a constitution.

Constitutions Made by Different Methods. Although the same underlying factors enter into the making of all constitutions, the external aspects of the process of constitutional development vary widely in different states. The British constitution, as we have seen, has grown or been evolved by the slow process of accretion and has never been embodied in a single instrument. As a matter of fact, much of the English constitution has never been put into definite documentary form, but consists of long series of recognised customs, traditions and precedents. In most countries, however, social conditions have not been as stable and social change has not come as peacefully as in England, consequently the process of constitution making has been more discontinuous, more deliberate and often more violent. Monarchies have often been obliged, because of rebellion, actual or potential, on the part of their subjects, to grant and put into effect complete constitution. In other instances, the people or a certain part of them have succeeded in forcing the calling of some sort of constituent assembly empowered to frame a constitution. In still other cases the people have gained the right on their own initiative to summon such a constituent assembly. The American (1787) and German (1919) constitutions were framed by conventions consisting of delegates representing the several states, and the former was ratified by a specially elected convention in each state of the U. S. Virtually all written constitutions have come into being through somewhat similar process. A constituent assembly of some sort draws them up, and they are put into effect by this body or by a process of ratification in which people directly or indirectly participate.

What a Constitution Contains. It will perhaps contribute

to a better understanding of the nature of constitutional government if we set down in a summary form the principal matters which a constitution regulates.

1. Every constitution, in some way or other, sets the limits of governmental power. It makes no difference whether the constitution be the work of a fully representative constituent assembly, or simply the result of an act of self-denial on the part of a monarch, it definitely limits the exercise of governmental authority. What may be done and what may not be done in the name of government are declared and set forth; and to that extent at least the constitution becomes the source of political power.

2. A constitution determines the rights and obligations of subjects and groups of subjects with reference to their government and also with reference to one another.

3. A constitution determines as to who may participate in the exercise of governmental power and to what extent and how. Even under governments that are considered thoroughly democratic not all persons are permitted to participate in the working of government, and in governments of less democratic character a great many classes of persons are excluded from having voice in government.

4. A constitution lays down certain fundamental rules and establishes certain fundamental methods by which the governing officials of the state are to be chosen.

5. A constitution always determines in a general way, and often with great minuteness, how the government shall be organised, what powers shall be exercised by it and how its different organs and agencies shall be co-ordinated.

6. A constitution establishes in its own terms the fundamental and supreme law of the land and, therefore, anything done in contravention of the constitution is unauthorised and illegal.

Contrast Between Constitutionalism and Absolutism. These things mark the essential differences between constitutional government and absolutism. Constitutional government is not necessarily democratic government, but no government can be democratic that is not based upon a broadly grounded constitution.

For instance, the government of Japan before 1945 was a constitutional government, though it was far from democratic; the same thing is true of the Soviet government of Russia. The governments of Austria, Germany and Turkey—before 1918—were of the same type. All these governments had or have constitutions, very elaborate and

detailed. Yet they could by no stretch of imagination be deemed democratic, because these constitutions made a distribution of political power and provided for a system of governmental organisation and operation which accorded to certain individuals and groups and classes a great many special advantages, prerogatives and privileges which were denied to the majority of the people.

Democracy, on the other hand, is a type of constitutional distribution of political authority and organisation for governmental purposes which throws open the enjoyment of political power and extends the favours, protections and guarantees of the State to all individuals, groups and classes in the same measure. In other words, democracy places us all on the same political footing ; gives us all, theoretically, the same rights, the same obligations, the same privileges, the same opportunities and the same advantages. Sir Stafford Cripps defines democracy thus : "By democracy we mean a system of government in which every adult citizen is equally free to express his views and desires upon all subjects in whatever way he wishes and to influence the majority of his fellow citizens to decide according to those views and to implement those desires."[1] But he admits that such democracy is fast disappearing, yielding place to either totalitarianism or authoritarianism.

This does not mean, of course, that under democratic government, we may all enjoy in the same manner and to the same extent the practical everyday result of governmental activity; for the group struggle goes on under democratic government as much as under any other type of government and the course of democratic government is likely to be deflected one way or the other by group pressure and group activity. Democracy does, however, or should remove all arbitrary and unnatural discriminations between different individuals and groups and give freer play to individual and group initiative than is possible under any scheme of government.

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2

THE THEORY OF FEDERALISM

> If modern legal thought recognises several possessors of State authority in the same commonwealth, then we can only conceive of the relationship that a certain compendium of rights and duties constitutes one highest and indivisible sphere of power, but a number of beings is called to their associated possession. Withal in the Federal State the State authority is of exactly the same character as in the Unitary State. The difference lies only in the peculiar form of the institutions (beings) possessing the authority of the State, which is not a single collective person, but a number of collective persons ordered together in a specific way.
>
> —HUGO PREUS

CONSTITUTIONS have been classified in different ways. One of these classifications is that into unitary and federal types. The recent changes in the relations subsisting between States and the rapid advance of science have brought about tremendous modification in the political outlook of nations. The old ideas of national self-sufficiency and national absolutism or independence are being given up in favour of interdependence of nations.

Types of Political Unions. Political combinations are coming into existence more and more and the prophecy of Prof. Henry Sidgwick, *viz.*, 'When we turn our gaze from the past to the future, an extension of federalism seems to me the most probable of the political prophecies relative to the form of government,' is proving true. Even the history of the ancient and medieval ages affords us examples of political unions.

All these unions, however, did not and do not exhibit the same type. A careful study of these unions enables us to classify them into the following four types :

1. Personal Unions. An example of this is afforded by the union of England and Hanover from 1714 to 1837. When George I ascended the throne of England, he retained under him his ancestral possession of Hanover. During the period 1714-1837, England and

Hanover had the same person as the head of the State, but the two States retained their independence unimpaired, in internal as well as external matters.

2. Real Unions. Between the years 1603-1707, England and Scotland remained as independent states only in internal matters, whereas in all foreign dealings they appeared as one state under the same sovereign. The Act of Union, 1707, united England and Scotland even in internal matters. Article III of the Act stated: "That the United Kingdom of Great Britain be represented by one and the same Parliament to be styled 'The Parliament of Great Britain'." Other Articles established uniformity of weights, measures and coinage. A common seal was substituted for the two till then in use. The most important provision was contained in Article XXV which perfected the union by providing "that all Laws and Statutes in either Kingdom so far as they are contrary and inconsistent with the terms of these Articles, or any of them, shall, from and after the Union, cease and become void and shall be so declared to be by the respective Parliaments of the said Kingdoms." This was, thus, a case of real union which resulted in the voluntary establishment of a unitary state.[1]

3. Confederation or Temporary Alliance. This type of union between two or more states usually grows out of a temporary alliance, concluded for specific purposes, political or economic.[2] Common institutions are established to carry out these specific purposes. Such institutions are undoubtedly few in number and the decisions of these bodies are more or less recommendatory and not mandatory. The typical examples of such confederations were the American Confederation (1777-1789), the Swiss Confederation (upto 1874), and the German Confederation (upto 1874). Even the pre-war-I Austro-Hungarian Empire was more a confederation than a real federation.

4. Federations. The fourth and the last type is the federal union in which the federating units, or the component parts, definitely lose their erstwhile independent character, retaining only some powers in their hands as separate states, and transferring all other powers into the hands of a superior authority or state which thus becomes supreme in all external affairs. Such federal unions are the United States of America since 1789, Switzerland since 1874, Repub-

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[1] Sharma : *Federal Polity*, p. 4
[2] Ibid.

lican Germany, Canada since 1867, Commonwealth of Australia since 1900, The Indian Republic and Soviet Russia, besides a few smaller ones.

Federalism defined. Federalism is the device by which the force of the state is divided among 'a number of co-ordinate bodies each originating in and controlled by the constitution'.[1] Why is this division necessary? Common experience shows that in his everyday life a citizen is concerned more with the activities of his town or district or province in which he resides than with the activities of his nation or country. He wants education, good sanitation, means of general relief, light and roads, to enable him to live a happy life. His local sentiment or 'regional patriotism' confines his attention more to the immediate body over him than to the distant central government. It is only indirectly and on rare occasions that he is called upon to look beyond the limits of his town or locality. This is why in ancient and medieval ages, when the means of communication were few, small States were the general rule. Undoubtedly the recent scientific discoveries and inventions have bridged the seas, annihilated distances on the land and conquered the space in the air, and thus brought about, so to say, 'shrinkage' of the earth. Therefore, states have grown interdependent and thrown off the cloak of absolute 'isolation'. While increasing international co-operation is seriously delimiting national independence in certain fields of activity, it is also opening up fresh and greater opportunities for self-expression and self-realisation. Necessarily, therefore, a citizen, though he is still moved by local sentiment, feels now the imperative necessity of interesting himself in the activities of the districts in his neighbourhood. These two seemingly contradictory interests, local and national, have been co-ordinated by the concept of federalism.

Federal governments are the result of deliberate action on the part of constitution-makers and are, thus, in every way, of later development than unitary governments which have evolved most imperceptibly. In reality, 'federalism connotes a high degree of political experience for its successful establishment and working'.[2] And for this reason, we find that federal unions before the year 1787, when the constitution of the United States of America was formed, were really exceptions. We meet cases of federal unions even in ancient history

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[1] *Federal Polity*, p. 1.

[2] James Bryce : *Constitutions*, p. 271.

but these 'scarcely got beyond the form of leagues of small republics for the purpose of common military glory'.[1] There were many 'empire states' in days of antiquity wherein the smaller kingdoms were under subjection to the overlord or emperor, but those empires did not possess the chief attributes of federal state. For, as Freeman points out, 'the name of Federal Government may....be applied to any union of component members, where the degree of union between the members surpasses that of mere alliance, however intimate, and where the degree of independence possessed by each member surpasses anything which can fairly come under the head of merely municipal freedom'.[2]

Evidently, in a federation there is division of power between the national or federal government which presides over the whole territory of the nation and the governments of the various component states or provinces which govern the smaller units inside the federation. 'Two requisites seem necessary to constitute a federal government. On the one hand, each of the members of the union must be wholly independent in those matters which concern each member only. On the other hand, all must be subject to the whole body of members collectively'. Lord Charnwood defines a federal constitution as the constitution in which 'one important part of government is discharged by a number of different authorities belonging each to one district or province of the country and another part of the government is discharged by a single authority distinct from all the others and belonging to the whole country'.[3]

Federations: How Formed. A federation is established in one of the two ways, *viz.*, integration and disintegration, according as the centripetal or centrifugal forces are the stonger.

(1) Integration of States. In the first case, a federation is formed by the willing co-operation of several states, till then absoluetly independent or quasi-independent, both internally and externally, to surrender a part of their authority into the hands of a new central authority which they voluntarily establish over themselves for the discharge of such functions of government as are of national importance as opposed to local interest, while retaining at the same time those other functions which they are capable of discharging themselves

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[1] Freeman, *History of Federal Government*, Vol. I. p. 3.

[2] Ibid. pp, 2-3.

[3] *The Federal So'ution*, p. 55.

separately. That is to say, these states enter a federation when they desire *union* but not *unity*. Examples of such federations are the United States of America, the Swiss federation, Indian Republic and the Commonwealth of Australia.

(2) Division of a big State. In the other case, a big state may be divided into two or more smaller states, each of the latter entrusted with the discharge of functions of local or provincial interest and the original state retaining in its hands all other matters of national importance. This actually happened in the year 1867 when United Canada was split into two provinces (the province of Quebec and the province of Ontario) and the British North America Act was passed to establish a federal government in that colony. A similar tendency preceded the formation of the Union of South Africa. The resolution appointing a Commission of Inquiry, passed on June 9, 1871, by the South Africa Cape House of Assembly contained these words: 'And as it may be expedient that the Colony should be divided into three or more Provincial Governments for the management of their domestic affairs formed into a federative Union under a general Government for the management of affairs affecting the interest and relations of the United Colony.....'[1] The process by which the federal Republic of India has been formed is a combination of both the above processes. Between the Indian States and the former provinces of India there has been an integration. Also some new provinces have been carved out of the bigger provinces, for example, the formation of the Orissa province composed of Oriya speaking territories of the original province of Bihar and Orissa, and the formation of Andhra as a separate unit out of the Telugu speaking areas of Madras State and certain parts of the former Hyderabad State, the integration of a part of Madhya Pradesh with Bhopal, Vindhya Pradesh and Madhya Bharat into the newly formed state of Madhya Pradesh; and so on.

Characteristics of Federations. A study of the federal, confederate and unitary states reveals distinguishing features of each type. Here we propose to consider the chief characteristics of federations. These features, as Herman Finer points out, are the distribution of legislative and administrative powers together with representation of the states in the Federal parliament and special revenue arrangements (*i. e.*, the coexistence of two governments), the rigidity of

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[1] Newton: *The Unification of South Africa*, Vol. I. p. 12.

the federal constitution, special position of the judiciary and, finally, a special theory of allegiance and secession.

(1) **Coexistence of two governments.** In a federation the government of the whole territory, also called the federal or central government, is in juxtaposition with the governments of the component states or Provinces, sometimes called 'part states'. Both these sets of governments derive their authority from the constitution and are, therefore, independent of each other's control in the spheres assigned to each of them by the constitution. 'A federal constitution differs from a unitary constitution in the sense that whereas the latter recognises the existence of only one government which is supreme in all matters concerning the state—without any kind of reservation whatsoever—the former, being by its very nature a contractual agreement, necessarily distributes the powers pertaining to administration between the several state-governments on the one hand and the federal government on the other'.[1] It may be argued here that now-a-days even in a unitary state decentralisation of authority is on the increase and local governments and 'local bodies' are being set up to administer matters of local interest. Wherein does the real difference lie between a unitary state, and a federation? The question may be answered thus. In a unitary state there are two 'levels' of government, the central and the local or 'municipal', but the authority of the former is all supreme even over the latter. The local or municipal governments are the creation of the central authority which has the constitutional and legal authority to add to the powers of these bodies, or withdraw some powers from them, or even totally abolish them, without being guilty of any constitutional impropriety; such an act of the central government cannot be declared illegal, for the government sets up, of its own free will, local bodies for the sake of administrative convenience. The laws or regulations of these local bodies are merely 'municipal' bye-laws and are binding only so long as the central government does not disallow them. Whereas, in a federation there are three 'levels' of governments so to speak, the federal or central government, the governments of the component states or provinces and also local bodies (as in a unitary state), it is the existence of the governments of component states which differentiates a federation from a unitary state. The authority of the state-government is derived not from the central government (also called

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[1] *Federal Polity, p. 7.*

national or federal government) but directly from the federal constitution itself; that is to say, the state-governments in a federation exist independently of the national government. The laws made by the state-governments have as much force as those made by the national government.

Division of Powers. Each of the two sets of governments, the national government and state-governments, has specified powers to exercise. The division of powers is complete for all practical purposes, in every sphere of governmental activity, *viz.*, legislative, executive, judicial, administrative and revenue. The federal constitution itself specifies the allocation of powers to the governments. The general principle underlying the division of powers is that all powers that are necessary to safeguard all matters of national importance, *e.g.*, defence, foreign affairs, customs and tariffs, posts and telegraphs and the like, are allotted to the national governments; while all matters of provincial or 'local' interest *e.g.*, education, health, sanitation, local administration and the like, are assigned to the governments of the states composing the federation. Each government is assigned definite sources of revenue necessary to enable it to discharge its functions. The national government is generally assigned sources of indirect taxation, *e.g.*, customs, though the recent tendency is towards allowing that government to raise revenues from direct taxation as well. This principle of division of powers gives the two governments almost independent status, neither government being allowed to encroach upon the powers of the other.

Residuary, Concurrent & Implied Powers. No amount of precision with which the framers of a federal constitution may divide the powers or functions of government between the national government, on the one hand, and various state-governments on the other, can exhaust the list of functions, for the mere fact that these constitution-makers cannot possibly foresee the problems of the future. We may illustrate the point. The fathers of the U.S. constitution were performing their task in 1787 at a time when neither means of communication in that country, nor in other parts of the world, were so great as now. Also the problems now created by the scientific discoveries and inventions of the 19th and 20th centuries, resulting in increased international co-operation and inter-dependence, were not present before them. Therefore, they were not taking into account the new functions, or the increased functions, which the governments have to perform in these days.

The two World Wars and the astounding researches in science have revolutionised our conception of national state sovereignty. One concrete result is the increasing realisation of the fact of co-operative effort between states and sub-states without too much insistence on theoretical rights. As a result there has been greater and greater central control or direction over the affairs of units in federations. Large enterprises, affecting several states, have been undertaken by central governments in federations like the United States and the Indian Republic, either with the consent of the units or in the exercise of implied or concurrent or residuary powers.

Residuary Powers. To provide for future contingencies, all federal constitutions including the U.S. constitution, contain clauses regarding the *residuary* or *unenumerated* powers, assigning them either to the national government or to the several state-governments, according as the centripetal or the centrifugal force is stronger. For example, in the U.S. the residuary powers are vested in the state-governments, while in Canada they are vested in the government of the Dominion.

Concurrent Powers. There is often a provision in a federal constitution regarding 'concurrent powers' which either relate to functions not assigned to any of the governments or to those which are specifically mentioned as being of local as well as of national interest. In all these matters, both the governments, national as well as state, are allowed to exercise powers of legislation and administration, subject to the important condition that in case there arises a conflict between the national government and any of the state-governments, in respect of the exercise of any concurrent power, the voice of the national government is final. This is a very important provision which safeguards desirable uniformity of laws in certain important matters and also imparts strength and vigour to the national government. To give an example, Article XIII of the German Constitution of 1919 laid down that 'Federal law overrides state law', in matters where the, two governments, federal and state, had concurrent powers.

Doctrine of Implied Powers. The *Doctrine of Implied Powers* has assumed a very great constitutional importance ever since it was propounded by the U. S. Supreme Court. The constitution of 1787 of the United States assigns only specifically mentioned powers to the federal or national government, reserving all other powers to the state-governments. These specified powers of the federal government are, indeed, very limited. Section 8 of Article I of that constitution lays down the powers of the Congress thus:

'The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

'To borrow money on the credit of the United States;

'To regulate commerce with foreign nations and among the several States and with the Indian tribes;

.....etc., etc.'

The concluding words of this section 8 say that the Congress shall have power 'To make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof'. Now these words are so comprehensive in their meaning that they have been very liberally interpreted by the Supreme Court in favour of the Congress and by applying them to actual cases the Court has propounded the *Doctrine of Implied Powers*, *i. e.*, powers, though not specifically assigned, yet implied or latent in some other specified powers. Chief Justice Marshall, the greatest exponent of the doctrine, thus succeeded in strengthening the federal government in the U. S. Charles A. Beard and Mary Beard in their interesting book *The Rise of American Civilisation*, go to the length of saying that the concluding words of Section 8 have really proved *Pandora's Box of Wonders*. This doctrine of Implied Powers is imperceptibly pervading the decisions of Supreme Courts in almost all federations, thus filling up a gap in the specification of powers.

Double Citizenship in Federations. This at once brings us to the problem of the existence of double citizenship in a federation. Clearly, every individual citizen in a federation owes allegiance to the government of the state or province of his residence, for those matters which are within the jurisdiction of this government, and he also owes direct allegiance to the national government for those other matters that are the concern of that government. In a unitary state the citizen owes undivided allegiance to one central government. In a confederation, he owes allegiance to his state-government, because the government of the confederation exercises its authority only through the intermediary of the state-government, and not directly over the citizens of the state. Bryce clearly defines this double citizenship in a federation thus: 'The essential feature consists in the existence above every citizen of two authorities, that of the State, or Canton (as in Switzerland) or Province (as in Canada), to which he belongs and that of the

Nation which includes all the states and operates with equal force upon all their citizens alike. Thus each citizen has an allegiance which is double, being due both to his own particular State and to the Nation. He lives under two sets of laws, the laws of his State and the laws of the Nation. He obeys two sets of officials, those of his State and those of the Nation, and pays two sets of taxes, besides whatever taxes or rates his city or county may impose'.[1] He calls that State a federation in which the central government exercises direct 'power over the citizens of the component communities'.[2] Newton too is clear on this point. He says: 'The Central Government acts not only upon the associated states but also directly upon the citizens'. The contributor to the *Encyclopaedia Britannica*, explaining the relation between the citizen and the two Governments in a federation says that the federal government, in turn, in the exercise of those specific powers acts directly, not only on the communities 'making up the federation, but on each individual citizen . . . . and the citizens of a federation consequently owe a double allegiance one to the state and the other to the federal government'.[3] This theory of double citizenship has been given effect to in almost all federations. To quote only one illustration, Article XIV of the U. S. Constitution states : 'All persons born or naturalised in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside . . . . . '.

(b) Written and Rigid Constitution. The second characteristic of a federal constitution is its peculiarly written rigid character. It is true that the modern tendency is to have a written constitution for all states, unitary or federal. What we mean by this peculiarity of a federal constitution is that though a unitary state can afford to have an unwritten constitution, because in that case all powers are vested in one government (the central government, which is all supreme), a federation cannot but have a written constitution which definitely divides the powers or functions between the national government and the governments of component states. With the singular exception of England, all modern unitary states have written constitutions, but no federal state has an unwritten constitution. A federal constitution is a contractual agreement, delicately balanced, arrived at between the governments of the states themselves, or

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[1] *Constitutions*, p. 228.
[2] *Constitutions*, p. 5.
[3] Vol. X, p. 233, cf. Bryce : *Studies in History and Jurisprudence*. Vol. II, p. 490.

between the national government and state-governments. No contract even between two individuals can be clear and free from possible future friction unless its terms are put into writing to avoid misunderstandings in its actual working, much less can a complex contract between states afford to be vague or unwritten. A federal constitution delimits the powers of national and state-governments and in doing so it becomes supreme, so that a law passed by either the national government or by any of the state-governments is valid only if it is in conformity with the constitution. There is no such restriction on the powers of a unitary government whose authority is supreme. We may quote here the grotesque expression in which De Lolme has summed up the powers of the British Parliament. "It is a fundamental principle with English lawyers that the Parliament can do everything but 'make a woman a man and a man a woman'." Such legislative sovereignty is unthinkable in a federation.

A federal constitution is also peculiarly rigid. When a federation is about to be formed, the claims and counter-claims of the federating states are very carefully considered. Stupendous difficulties are surmounted. The history of all federations has made it abundantly clear, and till 1946 we had also been witnessing the prolonged discussions regarding the establishment of an All-India Federation composed of British Indian Provinces and the Indian States. The result in all cases has been a compromise. Such a compromise which necessarily harmonises very conflicting points of view cannot and should not be left to be easily changed by ordinary process of law-making, if the federation is to be a permanent union. To leave a federal constitution open to easy and frequent changes is undoing the most important work done prior to the formation of the union. At the same time it is clear that however competent and far-sighted the statesmen who draw up a federal constitution may be, they cannot provide for all future contingencies. Human energy being essentially kinetic, no constitution can be so framed as to make provision to meet all new cases that may arise, or to solve new difficulties that may be discovered in the light of actual experience gained in the working of the constitution, therefore some device for amendment of the federal constitution has to be made. Furthermore, it is true that at the federative stage the fathers of a federal constitution sometimes deliberately leave some knotty problems to be solved by the workers of the constitution when it is actually put into force. Therefore a federal constitution provides a process for its amendment, but this process is different

from the ordinary process of federal law-making and is usually such as to give a voice to all interests and parties in the federation in the amending of the constitution and is, therefore, more difficult and complex than the method of amending unitary constitutions. Hence, a federal constitution being the supreme law of the land, is always written and peculiarly rigid.

(c) Special Forms of Judiciary. The third characteristic of a federal constitution is the peculiar position of the Judiciary created under its terms. It has already been stated that a federal constitution is a contractual agreement between the national government and the state-governments, involving distribution of powers and definition of all possible relations between them. If the federation is to be a permanent polity, the contract must be honoured and faithfully observed. But who is to decide whether any of the parties to the contract is violating it? Who is to adjudge the validity of the laws passed by any of these governments? Who is to uphold the supremacy of the constitution and interpret it? Who is, lastly, to expound the constitution by explaining its implications? Evidently, none of the parties to the contract, the national government or the state-governments, can be solely entrusted with this most important task. Therefore, the constitution itself sets up an independent judiciary, generally called the Supreme Court, to decide the disputes between the several governments and also to perform the work indicated in the foregoing questions. The Supreme Court derives its authority directly from the constitution; the judges hold office for life, unless, of course, impeached upon address generally by the federal legislature. In fact, the Supreme Court in a federation is the institution which has enabled the federation to function.

Supreme Courts in all federations have accomplished very important tasks. To give an example, which is undoubtedly the most valuable contribution of a Supreme Court, we may mention here the *Doctrine of Implied Powers* propounded by the U. S. Supreme Court.

(d) Theory of Secession. Federation implies a union of states which were independent or quasi-independent, before they associated together. The union of states may take any form. 'There is co-ordination, super-ordination, graduated subordination, permanent or temporary arrangements, easy or difficult withdrawal or no withdrawal at all, partial or complete partnership, that which originates in the search for the individual advantage as conceived by the separate partners

and that which is compelled by common need and loyalty and which establishes a community of thought and behaviour selfishly regardful of the actor's own good.' We have already treated the various forms of political unions. Here we wish to discuss the true nature of a federal union as regards its inviolability.

There are two conflicting views to be taken notice of. One view, chiefly held by the advocates of states' rights in the U. S. headed by John C. Calhoun, stated that the States being parties, as distinct and integral units, to the federal union, brought about by their willing co-operation in order to secure the advantages of that union, they were 'sovereign' bodies and could, therefore, break up the union or secede from it as soon as they found that the union was no longer to their advantage. The sponsors of this view relied upon the language of the Kentucky and Virginia Resolutions which clearly laid down that the States, as such, entered the union and were integral units inside it. At one time the issue was postponed in the U. S. by the repeal of the Alien and Sedition Acts which had brought the question of secession of States to the fore. In 1812, and again in 1828, a similar controversy was raised on account of the outbreak of war (1812), and the imposition of tariff by the Congress (1828), which adversely affected the interests of South Carolina. On both occasions, there was a compromise and the final issue was merely postponed.

The other school of thought led by Daniel Webster, asserted that the people of the country as a whole were the real parties to the union, and not the States. They, therefore, questioned the right of the States to nullify the Acts of Congress or to go out of the union. These advocates of the theory of rights of the National Government quoted the preamble of the Constitution of 1787 in their support: 'We, the people of the United States in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America'. The Civil War (1861) in the U. S. precipitated the issue. The Southern States would not submit to Abraham Lincoln's view regarding slavery and desired the continuance of the evil. The Northern States stood for the abolition of slavery. Finally the war resulted in the defeat of the Southern States and they were coerced, so to say, into remaining within the federation. But here superior physical force decided the issue and not arguments. In Switzerland, too, the War of the Sonderbund,

wherein the Catholic cantons combined to defy the authority of the union and seek secession, brought a similar issue to the front, in 1847. General Dufour, the commander-in-chief of the federal army, defeated the forces of the recalcitrant cantons and stopped their secession. Undoubtedly, the subsequent revisions of the Swiss Constitution in 1848 and 1874 removed most of the grievances of the secessionists.

The theory of secession of states has been criticised by several eminent authorities. Mr. Justice Story, of the United States of America, denies the right of secession of states, or the destructibility of the union, because he views the peaceful continuance of federal union to be for the vital interests of all the partners, *i.e.*, the people, composing the union. The real interest of the people is peace. If, however, the rights of individual citizens or even states are infringed, the only guarantees of individuals' rights and property 'are understood to consist in the peaceable appeal to the proper tribunals constituted by the government for such purposes; or if these should fail, by the ultimate appeal to the good sense and integrity and justice of the majority of the people'.[1] Mr. Justice Marshall, in McCulloch *versus* Maryland, expressed the same view; 'The government proceeds directly from the people, is "ordained and established" in the name of the people. . . . The assent of the States, in their sovereign capacity, is implied in calling a convention, and thus submitting that instrument to the people. But the people were at perfect liberty to accept it or reject it and their act was final. It required not the affirmance, and could not be negatived by the State Government. The Constitution, when thus adopted, was of complete obligation and bound the State sovereignties. . . The Government of the Union, then, is emphatically and truly a government of the people; in form and substance it emanates from them. Its powers are granted by them and are to be exercised directly on them and for their benefit'.[2]

Article I of the Swiss Constitution of 1874 states: 'The peoples of the twenty-two sovereign Cantons of Switzerland united in the present alliance. . . .form together the Swiss Confederation'. Similarly, Article I of the German Constitution, 1919, says that all the authority emanates from the people. Besides these clear expressions of the popular view of the federal union, we have to take into account the important fact that no constitution can contain a clause for the dissolution of the

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[1] *Theory and Practice of Modern Government*, p. 328.

[2] Ibid. Footnote 1, p. 828.

state it creates nor can it legally permit it.

'Whenever one State government, or more than one, who form the minority party find that their interests are seriously suffering under any of the laws of the central government, that minority party should wait, argue and try to get the law so changed as to make it amenable to its wishes. It has no right whatever to secede from the union when once the entire people of that union have formed that central body. For if this right of secession be conceded to the recalcitrant states the whole polity loses its stability and there is no certainty where this disruption might lead to. In a truly federal union—properly formed after exploring all avenues of community of interests and finding them more strong than points of conflict—there cannot frequently arise grave disputes which may compel a part to go out of it. In fact whenever the union breaks up after the secession of a part, it must be presumed that the union was from its nature not federal but only an alliance'.[1] The inviolability of a federal union has now been generally accepted. In the 1930-32 discussions regarding the future of an All-India Federation, the question of the inclusion of Burma inside the federation was raised and it was declared that Burma could not be given the right to go out of the federation once it had chosen to join it. This principle sound as it is, could not, therefore, be reconciled with the intention of the Indian Princes to obtain right of secession of their states after joining the federation.

Factors that Promote Federal Unions. The study of 'the amalgam of motives and environmental factors which cause large states to be composed out of small ones, or to be decomposed by the transference of powers to small areas within them'[2] is of great importance. History of federations shows that different federal unions were formed for different reasons which arose out of their special problems and circumstances. We discuss here some of these important factors which encouraged the formation of such unions.

(1) Physical Contiguity. No successful and lasting federation can be formed unless the federating states lie in close proximity to each other. Political co-operation between different states becomes close only when they lie in neighbourhood, because in that case they have to depend upon each other in day to day administration. 'Nearness of existence finds its counterpart in the creation of a certain imperceptible,

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[1] *Federal Polity*, pp. 24-25.

[2] *Theory and Practice of Modern Government*, p. 243.

yet by no means inappreciable, bond of union which does not, generally speaking, exist between two nations living at a great distance from another'.[1] The Hanseatic League did not last long because of the great distances that separated the scattered cities which had formed the League. New Zealand could not be brought within the Commonwealth of Australia because the intervening sea more than counter-balanced the aggregating tendencies, despite the wish of the fathers of that federation to include that island. For the same reason, New Foundland did not join in 1867 the Dominion of Canada which was formed only of the territories lying adjacent to each other. Hamilton observed with pleasure 'that independent America was not composed of detached and distinct territories, but one connected, fertile, widespreading country was the portion of our Western sons of liberty'.[2] R. H. Brand expressed similar reasons for the unification of South Africa. The country, vast as it is, is destined by nature to be one. Its physical features are uniform and there are no natural barriers between one part and another. The population forms and in reality formed even before the war, one body politic.[3]

(2) Economic Incentive. The 'tangible utilities', or the economic advantages, of union have proved a 'vital impulse to federation'. Uniformity of laws regulating commerce, contracts, tariffs, bills of exchange, navigation, railways and the like, was one of the most important motives which formed the basis of several federations. Hamilton, while discussing the advantages of union between the American states, wrote: 'The veins of commerce in every part will be replenished and will acquire additional motion and vigour from a free circulation of the commodities of every part. Commercial enterprise will have much greater scope, from the diversity in the productions of the different states'.[4] The fathers of the federal constitutions of the Dominion of Canada, Commonwealth of Australia, Union of South Africa, Hanseatic League and German Confederation, were all conscious of the economic advantages of the unions they were forming and all these constitutions contain clauses which lend support to this view. It requires no great stretch of imagination to perceive that a federation opens a wider field, a bigger market and greater

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[1] Sharma: *Federal Polity*, p. 102.
[2] *Federalist*, No. II.
[3] Brand: *Union of South Africa*, pp. 8-9.
[4] *Federalist*, No. XI.

commercial facilities to all the members. It is easy to understand the manifold difficulties which the traders have to meet when they come across diversities in weights, measures and coinage in traversing different countries or different parts of the same country. Therefore, economic factors have very largely contributed to the growth of modern federations.[1]

(3) Political Motives. The obvious advantages of a political union have also directly brought independent states to form federations. These political motives include the problem of defence, foreign affairs, and economy in administration. The Greek city-states combined together to offer a united opposition to the menacing power first of Macedonia and then of Rome. The Lombard League in Italy and the Swiss Confederation were originally formed to meet the attacks of the Austrian Emperors. The Netherlands had come together to resist Spanish aggressions. Hamilton aptly remarked that "A strong sense of the value and blessings of union induced the people, at a very early period, to institute a federal government, to preserve and perpetuate it'.[2] The independent colonies in Australia were mainly guided by political motives to form a federation. Jay, through the *Federalist*, appealed to the Americans to federate by emphasizing the political importance of union as against the imperialistic designs of European nations. He declared: 'If they (the European powers) see that our national government is efficient and well-administered, our trade prudently regulated, our militia properly organised and disciplined, our resources and finances discreetly managed, our credit re-established, our people free, contented, and united, they will be much more disposed to cultivate our friendship than provoke our resentment. If, on the other hand, they find us either destitute of an effectual government (each state doing right or wrong as to its rulers may seem convenient) or split into three or four independent and probably discordant republics or confederacies, one inclining to Britain, another to France and a third to Spain and perhaps played off against each other by the three, what a poor, pitiful figure will America make in their eyes. How liable would she become not only to their contempt, but to their outrage and how soon would dear-bought experience proclaim that when a people or family so divide, it never fails to be against itself'.[3] A bigger nation is always likely to

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[1] *Federal Polity*, pp. 106-110.
[2] *Federalist*, No. II.
[3] *Federalist*, No. IV ,cf. No. III.

command greater influence than a smaller one, and this creates an impulse towards union. Moreover, a federal government is also economical, as it enables the component states to remain secure, by keeping one single army or navy or air force.

The German statesmen who met at Weimar, after the World War I, were guided largely by political motives to resist the separatist tendencies of that group among them which was advocating separation of states and the dismemberment of Prussia. Political motives had also largely influenced the Indian statesmen and Princes in their discussions which led to the Republican constitution of India on federal lines. An united India will be better able to defend herself against foreign attacks, to have a strong and consistent foreign policy and to command influence in international matters, than an India divided into many sovereign units.

(4) Racial and Cultural Factors. A unitary state is possible in a country where the people inhabiting it speak one language, belong to one race and follow the same religion. But where the population is composed of various races, speaking different languages and even following different religions, unitary form of government simply widens the gulf between the peoples and retards the progress of the country. If the various parts of the country have to unite in order to preserve themselves as an independent and free state and advance their economic interest, the application of federalism is the only device to solve their constitutional problem. Such had been the case when the Dominion of Canada was formed in 1867. The French and the English, the two important communities, were reconciled only by recognising their diversity inside a united dominion. Their linguistic, racial and cultural differences were rendering smooth government impossible, till these were recognised and harmonised by the British North America Act, 1867. The attempt to found a unitary state in 1842 had failed and federalism succeeded, to a very great extent, in solving their difficulties and settling their disputes. Similarly, it was impossible for the Swiss Cantons, speaking three different languages, following different religions and containing Germans, French and Italians in their population to form a unitary state. These acute differences were recognised and then reconciled by applying federal principles and establishing the Swiss Federation in 1874. The federal constitution of the German Republic (1919) had also satisfied the varying needs of the states which composed that Republic. It was largely due to the differences in languages, religions and cultures of the various provinces of India that a federal con-

stitution had to be established in this vast country since 26th November, 1949.

Merits and Demerits of Federalism. Political writers differ in their estimate of the value of federalism. Some criticise it on the ground of its creating a weak government and divided allegiance. Prof. Dicey says that in a federation either a dominant state is likely to 'exercise an authority almost inconsistent with federal equality', or the many smaller states 'may easily combine to increase unduly the burdens in the way of taxation or otherwise, imposed upon one most powerful state'.[1]

Dicey's Criticism of Federal Tie. In actual practice, these two dangers do not generally appear, provided the constitution has been carefully drawn up. It is true that in the pre-war German Empire, Prussia, the most dominant partner exercised the greatest power, followed by other half a dozen states that came next in importance, and the remaining smaller states or townships were almost helpless and practically impotent. It was this defect in the constitution of the Empire which made Lowell remark that the pact could not fail to resemble that between a lion, half a dozen foxes and a score of mice. Also, inside the Austro-Hungarian Confederacy, Hungary, by virtue of her more compact Magyar population, virtually exercised seventy per cent of the power for thirty per cent of the expenditure, because Austria, though much larger in population and area than Hungary, was undoubtedly weaker on account of the conflicting racial and linguistic elements.

Prof. Dicey points out another defect in federalism which, he says, creates divided allegiance and constant irritation, often leading to litigation. These charges of weakness against federalism appear, at first sight, to be true. But careful drawing up of the constitution removes most of the defects and allows the polity to become strong. He, however, further says that 'federalism, when successful, has generally been a step towards a unitary state'. This only means that a successful and careful working of a federal constitution obliterates most of the differences by emphasizing the points of agreement. In other words, federalism, when properly worked, does not mean the setting up of a polity divided against itself, but it allows the growth of a powerful state which may appear, without in fact being so, to be a unitary state.

Brand's Criticism of Federal Tie. R. H. Brand, another critic

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1. *Law of the Constitution*, p. LXXVI.

of federalism, says that 'federalism is after all, *a pis aller*, a concession to human weakness'. And he goes on to say that 'federalism must be accepted where nothing better can be got, but its disadvantages are patent. It means a division of a consequent irritation and weakness in the organs of government and it tends to stereotype and limit the development of a new country'.[1] This is but an indirect admission of the value of federalism under certain circumstances, for it merely means that where unitary government is impossible, the second best alternative is federal government.

Laski's Appreciation of Federalism. Equally eminent writers, on the other hand, have highly praised federalism. Among them, Prof. Harold J. Laski goes so far as to say : 'The structure of social organisation must be federal if it is to be adequate. Its pattern involves, not myself and the State, my groups and the State, but all these and their inter-relationship'.[2] And he concludes that 'because society is federal, authority must be federal also'[3]. He dwells at great length upon the value of international and inter-state co-operation and asserts that we are now witnessing the slow erosion of 'the highly unified State.' According to him, 'The nation-State is not the final unit of social organisation. Its power as a sovereign body represents a phase only of historic experience and the pressure of world-forces has already made its sovereignty obsolete for any creative purpose. The nation-State is entitled to autonomy in all concerns of which the incidence is obviously local, but immediately what it wants and does, impinges upon the interests of the larger world outside. . . .'[4] Undoubtedly the world is heading towards international co-operation in all spheres of human life, political, economic, social, cultural and intellectual and he would be too bold a man who could now speak of the absolute sovereignty or independence of any state.

What Experience says of Federalism. In actual practice, federalism has not proved the weak concept as Dicey paints it to be. The various Cantons of Switzerland would have ever remained a cause of breach of peace in Europe, if they had not federated. Brooks has aptly remarked that 'a people divided by so many geographical barriers, so divergent in language and religion and also, it may be

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[1] *The Union of South Africa*, pp. 46-47.
[2] *Grammar of Politics*, p. 262.
[3] Ibid. p. 171.
[4] Ibid. p. 285.

added, in race and customs, must needs provide ample leeway in its governing machinery for local liberties and local self-rule. As a matter of fact this condition is fully met by the federal system of government and by the large measure of decentralisation prevailing in the various states'.[1] Similarly, the original thirteen states in America would not have produced the strong and wealthy U. S. Republic, if the framers of the constitution of Philadelphia had not succeeded in applying federal principles. Who can say that the U. S. constitution has proved weaker than the constitution of France where frequent changes of government are creating difficulties every year? To unite Canada into a permanent unitary state was an impossibility due to the conflict between the French and the English in that Colony. Also, French Canada and British Canada, without any union between them, would have carried on an incessant war with each other, but the Canadian federation since 1867 has undoubtedly created uniformity and harmony in diversity. Again, federalism enabled the makers of the Weimar Constitution to check the disruption of Germany after the war, 1914-1918, and continued the unity of that great power in the heart of Europe, till the emergence of Nazism.

In short, federalism has removed friction, stopped disintegration, suppressed jealousies, checked wars and created powerful, peaceful, and thriving nations out of a heterogeneous mass of human beings living in different parts of the habitable globe. This result could not have been achieved under a unitary government. To call federalism—the very source of union, compromise and interestatal peace—as a weak polity will be a contradiction in terms. 'For it has imparted vigour where weakness prevailed, bestowed peace where jealousies and suspicions were making political air foul and created prosperous big states where smaller and weaker states were fighting for their very existence'.[2] It is true that a unitary state is better organised and more lasting from its very nature, but where such a polity is impossible on account of the special needs of the country, federal government is 'undoubtedly the second best and most certainly the bestfor a certain set of circumstances.'

And, therefore, we have to agree with John Stuart Mill who says that 'Where the conditions exist for the formation of efficient and durable federal unions, the multiplication of them is always a benefit

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[1] *Government and Politics of Switzerland*, p. 13.

[2] *Federal Polity*, p. 136.

to the world'.

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3

FORMS AND FUNCTIONS OF GOVERNMENT

> The divine right of kings may have been a plea for feeble tyrants, but the divine right of government is the keystone of human progress and without it governments sink into police, and a nation is degraded into a mob.
>
> —DISRAELI

Government is a Necessary Feature of Every State. As a Community-Building animal man has set up a variety of institutions in order to live with his fellows. Of these institutions the state is the all-embracing and the most important, for it is pre-existing and pre-determined for him as he is born. Each state is known by the territory under its jurisdiction, the people living in it, the bond of cultural or socio-economic unity that keeps the people together, and, finally, a machinery or system to regulate its life. This machinery or system is what we mean by a government. It is necessary to run the political structure of the state. For a short time a state may not have a government, yet it will continue as state; there cannot, however, exist a government without a state. Such is the relationship between the two.

Forms of Government are Different in Modern States. Government is thus the machinery through which the political life of a state is conducted. All states do not have similar problems of life; the differences are geographical, economic, cultural, social and traditional. It is these differences that account for the different types of governmental machinery in modern states. It must, however, be remembered that forms of government have differed in all ages of human history and will continue to be varied equally, if not more, in future. Each state adopts the form of government best suited to its needs and most practicable in the particular set of its environments.

Classification of Governments Since Ancient Times. Even though the forms of government are of a varied character, they may be broadly classified so as to permit their scientific study. Such has been the attempt of a procession of political philosophers from the

ancient Greek times up to the present age. Each of these thinkers has adopted his own method of classification and then attempted to evolve a system of Government best suited, in his opinion, to a state.

Two Bases of Classification. The oldest attempt was made by Aristotle who has been acclaimed as the founder of political science as a subject of systematic study. His classification is based on two aspects, *viz.*, the quantitative and the qualitative.

(1) Quantitative Classification of Governments. From the quantitative point of view, he classifies governments according to the number of participants in the actual administration of a state. If the whole machinery of administration is run by, *i.e.*, according to the views of, one man, the government in monarchic. If the government is run by a chosen few, it is aristocratic. And, finally, if many persons (meaning thereby the whole of the people) actively participate in the administration, the government is democratic. This sort of quantitative classification of governments was adopted by a number of political thinkers during the Roman period (Polybius and Cicero being the most important of them), as well as during the middle ages.

(2) Qualitative Basis of Governments. The Aristotelian classification of governments strikes the imagination and exacts the admiration of thinkers when he adopts the qualitative test to study the various forms of government. According to this basis the test is the end to which the conduct of government is directed. This at once involves the motives and the attitudes of the rulers. If the government is conducted primarily for the welfare of the governed, which term means, in modern parlance, the bulk of citizens, the government is normal. In that case, the rule of the one is 'Royalty', that of a few 'Aristocracy', and that of the whole people 'Polity.' Taking the reverse view, *viz.*, the conduct of government primarily for serving the ends of the ruling body, the normal forms are converted into corrupt or perverted forms. In the latter forms, rule of the one is 'Tyranny'; rule of the few is 'Oligarchy'; rule of the whole people is 'Democracy'. Aristotle uses 'democracy' to designate the form which we in modern times, would call 'mobocracy' or 'anarchy'. Of all these forms which is the best? Aristotle, in answering the question, adopts the stability of government as the criterion, and from this view-point 'democracy is best where the poor greatly exceed the rich in numbers; oligarchy, where the superiority of the rich in resources and power more than compensates for their inferiority in numbers; polity, where the middle class is clearly superior to all the rest'. Both Polybius and Cicero

adopted the Aristotelian classification of government but considered that system of government the best which combines in itself the elements of monarchy, aristocracy and democracy. Hence they praised the Roman system in which the consuls represented the monarchic element, the senate was the aristocratic element and the popular assemblies formed the clearly democratic element.

Modern classification of governments. The classification of modern governments is, now-a-days, attempted not entirely from the quantitative or the qualitative view-point. The systems of government in modern states are so complex and varied that a different form of classification is essential. To us, governments are either monarchic, or democratic, dictatorial or collective.

Monarchy, benevolent or despotic. Monarchy may again be benevolent where the monarch rules with the definite object of serving the best interests of his subjects without impinging upon their rights and liberties; or it may be despotic (as in pre-war Russia of the Czars) where the ruler's word is law and the aim of government is to promote the interests of the ruler alone.

Democracy: direct or representative. Democracies too may be classified as direct and representative. In a direct democracy, the whole body of the adult citizens takes an active part in the framing of laws, appointment of magistrates and deciding of disputes. Such a democracy now exists in some of the smallest cantons of Switzerland. It had also existed in ancient Greek city-states. Direct democracy is possible only in a small territory where the people can easily be called together to deliberate on the problems of state, where their needs are few and relations with neighbours peaceful. But the modern world, due to the discoveries and inventions of science and the consequent changes in human activities, is made up of large states with extensive territories, with populations running into millions and relations with neighbours complex and even varying. In these states democracy has taken the representative form. Citizens exercise their voice only at intervals when called upon to elect their representatives to the legislature, and leave the actual participation in government to these representatives generally for a stated period. Representative democracy began in the eighteenth and nineteenth centuries; the Liberal Movement of 1848 resulted in the establishment of democratic governments in most of the countries of Europe. The Industrial Revolution, the advancement of science and intellectualism and the revolt against oppressive monarchic governments have been the chief causes of the

rise of representative democracies in the modern world. They are now continued because they have been found to work well.

Democracy is still the most popular form. In the present age democracy, although much abused or criticised in some quarters, has been a favourite with all constitution-makers. Its basic principles have been applied in actual practice through different types of political institutions. In general, the true test of a civilised government is the extent to which democratic ideals are embodied in its political system. England, France, the United States of America, Switzerland, Ireland and the self-governing dominions of the Commonweath of Nations are cited as examples of the traditional form of democracy of the XIX century Liberalism. It is considered as the final form and not merely a stage in the institutional development of a country.

Different views of democracy. It will be worthwhile to discuss here the basic principles of democracy in order, as a preliminary, to understand the spirit of democratic governments. Abraham Lincoln defined democracy as 'the government of the people, by the people, for the people'. This puts in a nut-shell the highest praise that could be bestowed on this system. It was, however, unnecessarily twisted by Oscar Wilde who said: 'Democracy means simply the bludgeoning of the people, by the people, for the people', and thus given an entirely different meaning. This condemnation of democracy is not justified by facts. The truth is that democracy tends to give the people the liberty that is essential for their true ends of human existence. It aims at creating conditions which permit the rise of the down-trodden and the enriching of the poor.

Principles of democracy. This may easily be seen from the principles on which democracy is based. In this form of government 'the ruling power of a State is legally vested, not in any particular class or classes, but in the members of the community as a whole'. It follows, then, that in a democracy the poorer class, by the very force of its numbers rules. Democracy is founded on Equality and Liberty (political, economic and social). This cannot be illustrated better than by the following words of the American Declaration of Independence, 1776:

> 'We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain inalienable rights, that among these are Life, Liberty, and the pursuit of Happiness, that to secure these rights, governments are instituted, deriving their just powers from the consent of the governed'.

> 'Men are born and continue equal in respect of their rights: The end of political society is the preservation of the natural and imperceptible rights of man. These Rights are liberty, property, security and resistance to oppression'.
>
> 'The principal of all Sovereignty resides essentially in the nation. No body, no individual can exert any authority which is not expressly derived from it'.

While defining democracy much stress is laid on its content of Liberty and Equality of all individuals. John Stuart Mill grants the individual the largest measure of liberty in all matters pertaining to himself but emphasises the restrictions in all those matters which concern others or society. Lord Haldane[1] explaining the ideal of democracy stated "the infinite value of human personality, humble and great standing on the same footing". But he rejects the notion of abstract equality on the ground that you cannot make all men equal; because Nature is too powerful. "One woman is born beautiful, and another ugly and that makes a great difference. One man is born with brains, and another without them. One has bad health, and another good health.....dismiss that abstract idea of equality.....It is an old notion that has obsessed many people....It did so in 1848, when the idea was that all men should be the same, and that, translated into practice, meant that nobody should rise higher than his fellow". He, therefore, defines equality as equality of opportunity and not of achievement.

Democracy considers every man to be the best judge of his own interest. It does not trust any person with unlimited powers, for there is the sure danger of his abusing them. Consequently, the larger the number of persons associated with administration the greater is the chance of eradication of evils and correction of errors. In such an organisation, there is little room for any individuals pursuing their selfish aims unrestrained by the community. On the other hand, it gives every citizen a chance to realise his best self and thus contribute to the general weal.

Conditions essential to the success of democracy. No system, however good from the theoretical point of view, can prove useful unless the conditions necessary for its successful working are

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[1] Haldane, "*The Future of Democracy*, pp. 7-9.

present. And that is why we find examples of the failure of democratic institutions here and there. The first essential condition for the success of democracy is a high standard of general education, not necessarily literacy. Unless the mass of citizens are acquainted with their rights and duties and possess a high sense of civic life, they cannot run a dem ocratic government successfully. Though much of the education may be acquired in the practical working of democratic institutions, *viz.*, participation in elections, legislatures, or other public associations and institutions, it is very necessary to train the would-be citizens, at an early age, in the elements of corporate life. Freedom of speech and association, coupled with a free and well-informed press which presents facts accurately and impartially without attempting too much to thrust its own opinions on an inquisitive public, are some of the necessary conditions of a popular education.

It is but a truism that the present must be founded on the past with an eye on the future, if the best interests of men are to be served and protected. This at once emphasizes the need of traditional equality for the success of a democratic government. Equality in social, political and economic life is the very spirit of true democracy. Class distinctions which restrict the enjoyment of civil rights to only a few, are a great barrier to democratic life and must be removed. Similarly, offi ces in the state must be open to all who possess the necessary capacity and qualification; franchise should be universal and not restricted to those possessing property or tracing their descent to any particular race. And, finally, the economic system must be so arranged as to guarantee not merely some work for every citizen, but also adequate wages to en able him to live a decent human life. Many states, in the modern age, fail to create the requisite economic conditions to stamp out unemployment, starvation and unhealthy conditions of life, with the result that democracy fails to evoke enthusiasm of the masses and finally provokes revolt against the very system that aims serving their best interests.

Liberty is obtained by fight against despotism. History of England illustrates the fight people have put up to wrest liberty from unwilling despots. Voltaire has summed up Englishman's fight in these words: 'It has cost much to establish liberty in England. It has needed seas of blood to drown the idol of despotic power, but the English do not think that they have bought their laws too dearly. Other nations have not had less troubles, have not shed less blood, but in their case the blood they have sacrificed has only cemented their servitude.'

Fight for democracy or liberty involves the recognition of a system of rights which alone enables citizens to live happily and well. The Americans got their independence in 1783 only as a result of a war of rights. The Irish people fought for their liberty for hundreds of years before they could choose their own form of government in 1937. Indians had to make tremendous sacrifices before they wrested their independence (1947) from British hands.

Democracy and the Declaration of Rights. In a large majority of modern states rights of citizens are included in their written constitutions. This fact by itself does not mean much, for the maintenance of rights is much more a question of habit and tradition than of the mere formality of declaration. Written enactment, however, enables a citizen to attack the executive in a court of law, if it has violated his rights. A declaration of rights in a constitution also reminds the people that it had to fight for its rights, it is a valuable parchment in so far as the sanctity of a principle is concerned. This principle sets limits to the powers or the functions of government. It establishes conditions under which a people can freely express its life of instinctive freedom and enables the citizens to proclaim :

It is the land that freemen till,
That sober-suited freemen chose ;
The land, where girt with friends or foes
A man may speak the thing he will ;
A land of settled government,
A land of just and old renown,
Where freedom slowly broadens down
From precedent to precedent.

Democracy and the Great War of 1914-18. World War I (1914-18), as was asserted by the Allies and their sympathisers, was fought to make the world safe for democracy. No doubt, the twentieth century had opened with a new chapter in democracy. The formation of the Commonwealth of Australia on 1st January 1901, and the grant of responsible self-government to the provinces of the Union of South Africa in 1909, were important signposts on the road of democracy. German violation of Belgian neutrality in 1914 was the signal for England's entry into the war, followed three years later by the United States of America. President Wilson of America had assured the world that at the end of the war people would have self-determination as the basis of their government. The establishment of the League of Nations was also a great step towards a better world order

in which rights of nations were to be recognised on principles of equality and justice. Unfortunately, however, the Treaty of Versailles, 1919, that ended the war, raised, on the ruins of the Austro-Hungarian, the Ottoman and the German Empires, new pillars of imperialism in total disregard of the principle of self-determination enunciated by President Wilson. The defeated Germany restarted her political life according to the Weimar constitution which set up a democratic, federal, republican state. But in Italy, the parliamentarianism of the liberal movement of 1848 failed to realise the expectations raised by the secret Treaty of London which had brought Italy into the war on the side of the Allies. The Italian parliamentarians were defeated in the diplomatic battle fought at the peace table in Versailles. The consequent disappointment in Italy resulted in the utter defeat of democracy and the rise of Mussolini's dictatorship. In Russia, the Revolution of 1917 had already replaced the Czar's despotism by a new system of government which was as far removed from the nineteenth century conception of democracy as the new dictatorship in Italy established later. It was the rise of a collectivist state based on Marxian doctrines.

The spoils of war, *viz.*, large parts of the Austro-Hungarian Empire, the Ottoman Empire and the colonial possessions of Germany brought into existence new states in Central Europe backed by the League of Nations, and augmented the overseas possessions of the victors, particularly England and France. The principle of self-determination which was expected to be the fundamental basis and the only criterion of post-war democracy, for safeguarding which the war was supposed to have been fought, was completely disregarded in practice.

The world thus remained as unsafe for democracy after the Versailles Treaty (1919) as it was ever before. Disarmament by all European nations remained an unrealised dream. Then there was a general economic collapse which affected the whole world and practically killed the spirit of the infant democracies of Germany, Austria, Poland and other smaller states in Europe. The Weimar Republic unable to stand on its legs collapsed, yielding place to the Third Reich under Hitler (1933). Austria too adopted a dictatorship, followed later by Poland to some extent. All this led to a new danger in Europe fanned by a war of ideologies, particularly that between socialism and dictatorships. Fascist doctrines invaded practically every country and democracy became an unpopular system of government.

Thus the post-war I Europe produced two new forms of govern-

ment, *viz.*, collective soviet rule as established in Russia and totalitarian dictatorship as it existed in Germany and Italy. Both in their basic philosophy and the nature and forms of institutions, these two types of government present ample scope and material to a student of modern governments. This is taken up later in the book.

Fascism and Nazism resulted in the outbreak of World War II which in its course led to the rise of nationalism in South and South-East Asia, the Middle-East and Africa. Colonialism crumbled and new independent states came into being, with democratic governments deriving their authority from the people. The concept of a welfare state caught the imagination of the people, leading to greater functions of government.

Independent and Dependent Governments. Of the modern states, some possess independent governments and others are still dependencies. The independent states, like England, France, Germany, Italy, Japan, India and a host of others have systems of government either actually or impliedly approved by the citizens. The government in all of them is conducted by a party, or according to a constitution, which has immediately or remotely the backing of the people, whether the government is of the democratic or of the dictatorial type. Before the forces of nationalism were released during and after World War II there were large states like India till 1947, Palestine and most of the mandated territories which were denied the right of self-determination or self-government, either on the plea of their general unfitness or of the special responsibilities of the dominant country. These countries were the black spots of the civilised world and presented serious problems to true lovers of democracy who would not accept the pretensions of the dominant countries at their face value. England, the mother of parliaments and democracy, held large parts of the world under her subjection, on the ground of fulfilling a definite mission. The rule of the dominant country over dependencies, which cannot be justified on any moral grounds in a democratic age, is in some places in Africa and elsewhere still held out to be continued on principles. G. B. Shaw has, in his characteristic way, thus spoken of the Englishmen who rule over vast dependencies. 'There is nothing so bad or so good that you will not find Englishmen doing it; but you will never find an Englishman in the wrong. He does everything on principles. He fights you on principles; he rules you on business principles; he enslaves you on imperial principles.' Thus dependencies with their own systems of government as established by the dominant coun-

tries, apparently justified on some principles, are peculiar study by themselves both in the aims and methods for government.

True Aim of keeping Dependencies. A dominant country keeps its control right over its dependencies not for the benefit of the subject peoples, but for deriving several benefits to its own. These benefits consist of (*i*) tribute or revenue raised from the dependencies in times of peace and men and money in times of war ; (*ii*) open markets in the dependent countries for the purchase of raw materials and the sale of manufactured goods by the dominant country ; (*iii*) maintenance of naval bases or air bases, as in Gibraltar, Malta, Ionian islands, Canary islands, etc.; (*iv*) sending to the dependencies the surplus population of the dominant country or its criminals, as was the case with the early British colonies in America, Australia and the Andaman island ; and (*v*) the very glory of possessions, of which the best example is the Englishman's pride of the British Empire over which the sun was never said to set. The pretensions of a dominant country that it continues its hold over other countries for the latter's benefit and with a view to grant self-government when they become fit for it, are only a cloak to justify unjust domination. Sir George Cornewall Lewis thus admits the disadvantages to a dependency like India till 1947 arising out of a foreign rule :

'Although British India may have derived considerable benefit from the superior honesty and intelligence of the English office-holders, yet the practice of employing Englishmen exclusively in all important offices has on account of the necessity of giving them high salaries and the inadequacy of the native public revenue, led to the accumulation of an enormous mass of duties on the head of a single person and has produced a practical denial of justice and an abdication of the most useful functions of government, in many parts of the country. The insults often offered to the feelings of the natives by the overbearing behaviour of the English would be of less importance, if the more permanent and serious interests of the people were efficiently protected. But unhappily it seems that in most parts of the country, life and property are scarcely more secure than they were under the native governments and that the main benefit which the people have derived from the British rule is the exemption from foreign invasion'.[1]

In equally emphatic words, Sir George refuses to believe that a dominant country could ever restore true freedom to its dependency

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[1] *An Essay on the Government of Dependencies*, p. 263.

by slowly training the subject-people in the art of self-rule. He says : 'If a dominant country grants to a dependency popular institutions, and professes to allow it to exercise self-government, without being prepared to treat it as virtually independent, the dominant country by such conduct only mocks its dependency with the semblance of political institutions without their reality. It is no genuine concession to grant to a dependency the names and forms and machinery of popular institutions to bear the meaning which they possess in an independent country, nor do such concessions produce any benefit to the dependency, but, on the contrary, they sow the seeds of political dissensions and perhaps of insurrections and wars, which would not otherwise arise'.[1]

And that is why Swami Dayanand, one of the greatest socio-religious reformers and political philosophers of India, asserted that the indigenous native rule is by far the best ; a foreign government, perfectly free from religious prejudices, impartial towards all, kind, beneficient and just to the native like their parents though it may be, can never render the people perfectly happy. This is but saying that good government is no substitute for self-government.

Responsible and irresponsible governments. Governments whether of dependencies or of independent countries are also classified from another point of view, *viz.*, their responsiveness to the citizens. When a particular system of administration is conducted according to the wishes of the people or of their representatives, the government is called responsible. In such a system the administrators, that is the executive, conduct the administration in such a way as to please their masters who may be the citizens themselves as in a direct democracy like the Swiss cantons, or their representatives as in a representative democracy like England or France or India. But when the executive pursues a policy irrespective of the approval or disapproval of the people whom it serves as in the Central Government of British India or in the Indian States (before the advent of the Indian Republic) the government is irresponsible.

Government is a complex machine. The conditions of life in modern states are so complex in their nature and are determined by such a variety of factors, that the machinery of administration has to look after a very large volume of work which includes making of laws, the actual work of administration and the enforcement of laws. Political

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[1] Ibid, p. 307.

thinkers have suggested many devices for accomplishing governmental works with a view to make the people happy and prosperous, giving them the maximum amount of liberty without loss of efficiency of administration or fear of subversion of authority.

Three Organs of Governments. Aristotle had laid down the doctrine of the triple organs of government in his famous work *The Politics*. These three organs he designated as the deliberative, that pertaining to offices, and the judicial. Such division of governmental functions was discussed by a host of later political thinkers. It has now become so popular that in every modern state the government is run by the totality of efforts of all the three organs, legislative, executive and judicial.

Montesquieu on the Principle of Separation of Powers. Though the division of governmental activity into legislative, executive and judical has now been adopted by all governments that lay claim to modernity, the theory underlying this division was for the first time laid down by Montesquieu in his famous work *The Spirit of Laws* (1748). This theory was hailed by all liberal constitutionalists as the stronghold of popular sovereignty.

Montesquieu says :[1]

> 'When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty ; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws and execute them in a tyrannical manner. Again, there is no liberty, if the judiciary power be not separated from the legislative and executive. Where it is joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for the judge would be then the legislator. Where it is joined to the executive power, the judge might behave with violence and oppression. There would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise those three powers, that of executing the public resolutions, and of trying the cases of individuals.'

A similar view was expressed by the great English jurist, Blackstone, in his *Commentaries on the Laws of England* (1765), in these words : "In all tyrannical governments the supreme majesty, or the right both of making and enforcing laws, is vested in the same man or one and the

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[1] *Esprit Les Lois*, book XI, ch. VI.

same body of men; and when these two powers are united together there is no public liberty". This conclusion derived by the two thinkers from an erroneous analysis of the working of the British constitution became an article of faith with the later political writers of the eighteenth century. It was translated into constitutions made in the United States and France. In the United States state constitutions of 1776 and 1777 and the federal constitution of 1787 adopted the theory and attempted at an absolute separation of powers. In France the constituent assembly of 1789 incorporated in the XVI Article of the Declaration of Rights these words: "Every society in which the separation of powers is not determined has no constitution".

Though the theory of separation of powers largely influenced later constitution makers, its utility diminished in the nineteenth century because of the British constitution whose working invalidated it "as a universal proposition". The rise of the cabinet system of government, based on the responsibility of the executive to the legislature (where the executive is also a part of the legislature) led to a new definition of democratic system of government, without the least trace of "tyranny". Even in the United States there is the system of "check and balance" to coordinate the activities of the three branches of government, each of which is checked in certain respects by the other two. There the executive has a share in legislation through the exercise of the partial veto by the President over Acts passed by Congress and through initiating legislative measure by means of presidential messages. The legislature too has some share in the executive government by exercising the Senate's power of ratification of treaties and appointments to several federal offices. The judges are appointed by the executive, while the courts can pass upon the validity or invalidity of the acts of the two branches of the legislature. There is thus only a modified form of separation of powers in the federal government.

The great defect in the theory is that it assumes that the persons exercising legislative and executive powers would do so tyrannically. The example of Great Britain gives lie to the fear expressed by Montesquieu and Blackstone. But the theory has one good point, namely, in the actual conduct of public affairs the introduction of a certain degree of separation of powers ensures greater efficiency in administration.

This principle of separation of powers has come to be looked upon as vital to the safeguarding of the liberty of the people. It has been adopted by most of the modern democratic states, as a theoretical

basis of securing the freedom of the citizen from autocracy or tyranny of the rulers. Much, however, depends upon the actual conduct of the government because "in practice the boundaries between the three processes are by no means sharply drawn, and there is much overlapping and many complications".[1]

The Legislature in a State. The legislature is that organ or branch of a government which is concerned with the determining, enacting or altering of laws of the state. In an autocratic monarchy, the word of the ruler may be law, but no democratic or popular government can work without providing for a legislative body whose sole function is to deliberate on all matters affecting the welfare of groups or localities or the whole state. In a small state like the ancient Greek city-states or some of the small cantons of Switzerland at the present time, it is possible for the bulk of the adult citizens to come together and lay down laws or rules to regulate the common activities. But in large nation-states which are the peculiar characteristic of modern times, a representative legislature composed of the representatives elected by the citizens for the purpose, is the only practicable device for law-making. Such a body becomes, in course of time, a collection of experts in the art of law making. Though the beginning of a representative legislative body was made in England, the system has now been universally adopted in all civilised modern states.

Forms of Legislatures : Unicameral and Bicameral. In olden days, nations derived their laws from religion, codes of morality and the proclamations of rulers. Custom too played an important part. But in modern states deliberate legislation is the most prolific source of law, though custom, equity and adjudication exercise considerable influence. Therefore, in a modern government the question of the form, composition and powers of a legislature assumes considerable importance. Political history of England shows that it was more or less by accident that Parliament came to be divided into two houses, the House of Lords and the House of Commons. But several other countries that copied British political institutions followed England's example and established bicameral legislatures. Some states still maintain single chamber legislatures. Thus there are only two forms of legislatures, *viz.*, unicameral and bicameral.

Advantages of Bicameralism. Quite a large number of poli-

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[1] Ross, J. F. S. - *Elections and Electors*, (1955), p. 26.

tical scientists are of opinion that a bicameral legislature is more useful and better than a unicameral one. Marriot says that "With rare unanimity the civilized world has decided in favour of a bicameral legislature".[1] According to them the advantages of bicameralism are many. Firstly, when a legislative measure has passed through a chamber it is sent to the other chamber where it is again subjected to critical consideration. In this process some of the defects of the measure as it has emerged from the originating house are removed by the other house. In this way, an upper house (the name given to the smaller and less popular chamber) acts as a revising chamber. Secondly, due to the ever increasing volume of legislation in a modern state, it is extremely difficult for a single chamber to devote sufficient time and attention to every measure that comes up before it. Therefore, the institution of an upper house where some of the measures may originate, enables a large amount of legislation being considered simultaneously when both the houses are in session. True, every measure that is passed by one house is sent to the other for its approval. But even during the process of first consideration by a house, several unimportant measures are rejected or dropped and this definitely results in legislative convenience. Thirdly, it is asserted that when a popular chamber, which usually consists of younger persons elected directly by the citizens, often times in the heat of public excitement when passions run high on account of the controversy over any single important issue, considers measures whose subject matter had not been foreseen by the voters at the time of election, it happens that the popular representatives are unable to bring sobriety of thought to bear on the issues. In such cases, the upper house acts as a more sober body, consisting as it usually does of more elderly and experienced persons largely unswayed by passions and less prone to play to ephemeral feelings or less likely to fall victim to prejudices or temptations. In other words, the upper house acts as a brake on hasty or ill-considered legislation passed by the popular chamber. Fourthly, a popular chamber being representative of the masses on territorial basis does not represent the more stable elements in a state, *viz.*, vested interests, minority communities, certain important professions and industries. These defects are remedied by establishing an upper house composed on a basis different from that of the popular house. In this way is secured due representation of all interests and communities in the

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[1] Marriot—*Second Chambers*, p. 1.

legislative organ of the government. Fifthly, as the upper house is less numerous, and, generally speaking, consists of abler persons than the popular chamber, it devotes more time and applies better knowledge to making of laws than the other house.

Disadvantages of Bicameralism. As against the supporters of bicameralism, there are those who believe that upper houses have failed to serve the purpose for which they were established. It is argued, firstly, that in a democratic state if the upper house is elected popularly and enjoys co-equal powers with the lower house, it is merely duplication of the latter, hence it simply makes the legislative machinery more expensive and complex. Secondly, if the upper house enjoys less powers than the lower one, as in France and England, it is worse than useless. Thirdly, if the upper house is more conservative and elected on a narrower franchise than the lower chamber, it is merely a drag on the governmental machinery like the fifth wheel of a coach and is thus a negation of democracy. Fourthly, if the upper house is a nominated body as in Canada, the device only puts legislative power in the hands of the nominating authority; if it is an hereditary institution as in England, it wrongly assumes that legislative talent can be inherited or bequeathed; and if it is composed of representatives of professions and vested interests, it is impossible to apportion equitably the membership between one profession and another, or one particular interest and another, by adjudging their relative importance. It is also stated that even in a unicameral legislature certain devices can be introduced, *e.g.*, committee system or a provision that before a legislation is finally passed public opinion be invited or expert advice obtained with regard to its usefulness or adequacy, which will largely procure all those advantages that accrue, though in no high degree, from an upper house like delaying legislation or removing defects in a law.

Are Upper Houses in Federations Necessary? In the case of federal states, the apologists of bicameralism say that upper houses are unavoidably necessary in order to procure and maintain equality of status of all units, large and small, and serve as sheet-anchors of the particular rights of the units. Without the upper house, they argue, the small states will be out-voted by the bigger ones by the very superiority of number of the latter's representatives in the lower house which is constituted on population basis, and in this way the equality of status of all states which is a very important principle of federalism, will be violated. No doubt, in all federations at the federative stage insistence was laid on establishing upper houses on the basis of equal

representation of all units as a condition precedent to the formation of the union, but practical working of federal legislatures has demonstrably proved that the apprehensions of federal constitution-makers were not justified and the expectations then held of the usefulness of upper chambers have not been fulfilled in actual practice.

Composition and Powers of the Two Chambers. The problem of composition and relative powers of the two houses in a bicameral legislature has presented serious difficulties in modern states. In general, the present position is this. Upper houses are generally smaller than the lower ones, the most notable exception being the British House of Lords; they possess either less powers than, or co-equal powers with the popular chambers, but the U. S. Senate is definitely more powerful than the House of Representatives and is the strongest, while the British House of Lords is the weakest, of all upper chambers; the upper houses enjoy longer lease of life than the lower houses, the House of Lords being largely hereditary and the Canadian Senate having life-term; the lower houses exercise final control over finances, though in the U. S. A. the two chambers possess co-equal powers in such matters except that money bills originate in the lower chamber. In many states the upper chambers act as judicial bodies to try important cases of impeachment of high officials or heads of states. Where upper houses are elective, the franchise is narrower than for lower houses and in some cases even indirect election is resorted to, but in the U. S. A. since 1913 election of federal Senators by state legislatures has been replaced by direct election by voters in each state, and such is also the method for election of the Senators in Australia. The adjoining table illustrates the comparative composition and powers of the houses in some of the bicameral legislatures.

Different Methods of Election to Legislatures. The problem of the system of electing representatives to the legislatures is solved by each state for itself. There is, however, one thing common to elections to legislatures in different democratic states, *viz.*, the elections are held on party basis. Political parties are the core of democratic elections. Different methods of election exist in modern states. In England, members of the House of Commons are elected by single-member constituencies, after the abolition of the University constituencies. The candidate obtaining the largest number of votes, irrespective of the percentage of votes he secures, is declared elected.

Relative Majority System of Election. This is called the Relative Majority System of Election. It worked satisfactorily in England

Composition and Powers of the two Chambers of some Legislatures

	UNITED STATES 1787	CANADA 1867	SWITZERLAND 1874	AUSTRALIA 1900	SOUTH AFRICA 1909	U. S. S. R. 1936
(1) **LOWER HOUSE:** (a) *Composition.*	House of Representatives: 435 seats distributed on a population basis, not exceeding one per 30,000 inhabitants, but with a minimum representation of one for each State. One delegate each from Alaska and Hawaii, a 'resident Commissioner' from Puerto Rico and from the Philippines are admitted with a right to speak on any subject and to make motions, but not to vote.	House of Commons: Distribution of seats among provinces on the basis of population, the seats of other provinces being fixed in relation to that of Quebec which has a fixed representation of 73 members. Present strength: 261	National Council: One member for every 22,000 inhabitants and at least one member for each Half-Canton irrespective of its population strength. Present strength: 196	House of Representatives: Distribution of seats on the basis of population with a minimum of 5 representatives for each State. Present strength: 121	House of Assembly: Distribution of seats in proportion to the number of European adults in the province. Present strength: 159 Native voters of the Cape Colony elect 3 members who form additional members of the House of Assembly and who hold their seats for 5 years notwithstanding any dissolution of the House.	Council of the Union: One deputy elected for every 300,000 of the population. Strength depends on population and so varies. Present strength: 700 in 1958.
(b) *Mode of election.*	A representative must be at least 25 years of age, a citizen of the United States for at least 7 years and also an inhabitant of the State he represents. Term: 2 years. Direct election, the franchise being the same as for 'the most numerous branch of the State Legislature'. Disqualification on the ground of race, colour or sex forbidden. Universal adult franchise adopted in practice by all the States, subject to the limitations of literacy qualifications administered in many of the Southern States in such a way as to exclude the negroes.	A qualified voter, and a natural born or a naturalised citizen. Term: 5 years. Direct election. All adults enfranchised. No property qualification.	Clergymen, and members of the Federal Council, the executive organ of the State, specifically excluded. Term: 4 years. Direct election by the method of proportional representation. Universal adult male franchise.	21 years of age, a natural born citizen or a naturalised subject of the King for 5 years and resident within the Commonwealth for 3 years. Term: 3 years. Direct election. Universal adult (male and female) suffrage.	Resident for 5 years in the Union and a British subject of European descent. Term: 5 years. Direct election. Universal adult (male and female) suffrage, but only persons of European descent enfranchised.	Every elector entitled to stand as a candidate. Term: 4 years. Universal, adult, direct and secret suffrage. Age: 18. Those employing others for profit, private businessmen, monks and priests disenfranchised. The only legal party is the Communist Party.

so long as only two political parties, the Liberals and the Conservatives, existed and there was generally a straight fight between two candidates. Since the advent of the Labour Party, the system has failed to secure true and proper representation of the voters, in Parliament as will be shown in some details later. Where this system prevails political parties are not fairly represented in the legislature, even though only two parties contest the elections. The following figures speak for themselves. They relate to the elections to the lower house of the Canadian federal legislature:

Year of Election	Provinces	Party	Votes cast for the party	Seats secured by the party
1904	Nova Scotia ..	Liberals ..	56,526	18
		Conservatives	46,131	Nil
1911	British Columbia ..	Liberals ..	25,622	1
		Conservatives	16,350	Nil
1926	Alberta ..	Farmer's Party	60,000	11
1926	Manitoba ..	Conservatives	49,000	1
		Liberal Progressives ..	38,000	Nil

System of Proportional Representation. The evils of the relative majority system of election have been admitted by all. Several remedial measures have been suggested, the most important being the adoption of the principle of proportional representation called P. R. which aims at securing to each political party representation in legislature in proportion to the votes cast in its favour at the election. "Proportional representation, then, is the principle that in a party election, as just defined, the destribution of *seats* on the elected body between the parties shall correspond with the distribution of their *votes* by the electors."[1] The system of election by P. R. has been adopted in different ways. According to this system the constituencies are multi-member and voters are given either restricted power of voting, *i. e.*, less votes than the number of candidates to be elected,

[1] Ross, J. F. S.—*Elections and Electors, p. 12.*

or cumulative votes, *i. e.*, power to cast all votes a voter has, in favour of a single candidate or to distribute them among more than one candidate. There is also another form of proportional representation, called the single transferable vote system. In this form, a voter has only one vote and he expresses on the ballot paper his preference as 1, 2, 3, or 4 and so on, in favour of candidates of his choice. The details of the system are complex and concern the returning officer and, therefore, need not be discussed here.

Representative and the Voters : Their Relations. What should be the relations between a representative and his constituents ? Should he be at liberty to exercise his own judgment while voting for or against a measure before the legislature, or should he act according to the general opinion of his constituents ? How should he keep himself in touch with his constituents ? These are questions of importance in the actual governance of a state. They are solved by each state for itself. Periodical elections to lower houses, partial renewal of the upper houses at stated intervals, earlier dissolution of lower chambers in case of conflict between the cabinet and the legislature, the institutions of referendum, initiative and recall are some of the important devices adopted in several states. These are discussed at appropriate places in the book.

The Executive is the Second Organ of Government. The second organ of government is the Executive of which the form, functions and relationship with the legislature differ from state to state. No doubt, the spirit of administration of a state is determined by the form of its executive. Should the executive power lie in the hands of one person or many ? What should be its term of office, fixed or varying ? Should it be irremovable or removable and responsible ? If the latter, to whom should the executive be responsible in a democratic state ? To the legislature or to the people ? If the executive is to consist of many persons and is responsible, should each member be responsible individually or shonld they all work on the principle of joint responsibility ? Each state has answered these questions for itself.

Classification of Governments according to the Forms of Executive : Despotic, Presidential or Parliamentary. Governments are classified also according to the forms of the executive. When the executive power is unreservedly vested in a single individual who owes no responsibility to any body, the government is despotic as in monarchies like Afghanistan. Sometimes the real executive power is vested in a single individual elected by the people or their represen-

tatives for a stated period ; such a government is democratic and of the presidential type, as in the United States of America. The President of the U. S. A. is the sole executive, but he is bound to observe the constitution. In England, France, Indian Republic, the British Dominions, Ireland, etc., the executive is called cabinet. It consists of several persons owing joint responsibility to the legislature, generally to the lower house. Such a government is called parliamentary form of government or cabinet government. It remains in office as long as it enjoys the confidence of the popular chamber.

Principles of the Cabinet System. Parliamentary form of government, *i.e.*, the cabinet system, is perhaps the most important contribution of Great Britain to practical democracy. How it began and evolved is discussed later. There are definite principles on which the cabinet system works. The nominal executive is still the King in England, or the head of the state in any other parliamentary system, but the real executive power is exercised by the cabinet. The principles on which the Cabinet System works are: Firstly, there should be definite political parties in the legislature and the executive should be formed by the party which is itself in majority in the legislature or can command the support of the majority of members. Secondly, the exercise of the executive power is vested in a comparatively small body of officials called cabinet members, responsible to the popular chamber, though a few of them may belong to the upper chamber if there is a bicameral legislature. The cabinet frames the policy of administration, guides the legislature and places before it the budget for approval. The cabinet is but a small body inside the ministry which includes all those officials, ministers, parliamentary secretaries and under-secretaries, etc., all of whom resign office when the cabinet tenders its resignation. In the cabinet, the chief minister, generally called Prime Minister or Premier, is the leading figure. He not only forms the cabinet but also guides its general policy and distributes portfolios among the ministers. An individual minister may resign office by tendering his resignation to the Premier, but when the latter resigns, the whole ministry is considered to have resigned. He is the leader of the popular chamber where he defends the policy of his cabinet and answers criticisms. Thirdly, the cabinet continues in office as long as it commands the confidence of the popular chamber and must resign if the chamber passes a vote of no-confidence or rejects any important scheme, or disapproves of any measure, sponsored by the cabinet. In case the cabinet thinks that its policy and not the

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view of the legislature, is likely to meet with the approval of the electorate it may desire dissolution of the house and seek general elections to appeal to the country. If the country returns the party of the cabinet in majority, the cabinet continues, otherwise it resigns and the Opposition Party then forms the government. This is the real essence of the Parliamentary System of Government. Fourthly, all members of the ministry must be drawn from the majority party or the party that is called upon to assume the responsibility of government and the reins of office. This secures the continuance of a homogeneous policy in administration. But if there are more than two political parties in the popular chamber, none of which is in majority, the leader of an influential party is asked to form the government. He might choose all his colleagues from his own party and assume the responsibility of administration relying upon the support of some other party or parties in the legislature, or he might take into his cabinet a few ministers from other political parties to form what is called 'a coalition cabinet.' The policy of a coalition cabinet naturally involves a compromise between the principles of the parties forming the coalition. And this means a weak cabinet which is often in fear of break-up as in france.

Merits of Parliamentary Form of Government. There are important merits of the parliamentary form of government. In the first place, it necessitates the formation of distinct political parties with clearly drawn up programmes and policies which they place before the electorate for its approval. Electioneering on party lines is an important mode of imparting political education because the citizens, who are the ultimate masters in a democracy, become wide awake. In the second place, the system enables the adoption and continuance of a definite policy in administration, known and knowable, which is vital to the general welfare of the state. In the third place, it ensures healthy criticism of measures prejudicial to public welfare, for the opposition in the legislature acts as the watch-dog of democracy, and by being ever vigilant in trying to find loop-holes in the administration and expose them to public view, it prevents the government, *i.e.*, the party in office, from sleeping over its election promises or treading a path which is not in the best interests of the people. And lastly, in the fourth place, it prevents hasty legislation by providing wide and extensive popular discussion not only in the legislature itself but also in the press and on the platform outside the house.

Party system, a necessity in a democratic state. The necessity of a healthy party system for working parliamentary democracies

can hardly be over-emphasised. Even in states with irremovable executives but democratic institutions, the system is no less useful, for as Bryce remarks: 'Though the professed reason for the existence of a party is the promotion of a particular set of doctrines and ideas, it has a concrete side as well as a set of abstract doctrines'. It works on the basis of Sympathy, Imitation, Competition and Pugnacity. The members of a party are held together by a bond of mutual appreciation of feelings and community of purpose and are prevented from breaking with each other by the rules of party discipline. The liveliness created by discovering means to combat the antagonists and outgeneral them in the public life leads to a strange feeling of pleasure.

The party system crystallizes principles and opinions which keep the nation's mind alive to the requirements of the time. For, 'So few people think seriously and steadily upon any subject outside the range of their own business interests that public opinion might be vague and ineffective if the party searchlights were not constantly turned on'. It creates a concrete plan of action out of a hopeless confusion and chaos of ideas of the multitudes of voters. Though each party presents its own side of the case and tries to conceal the strong points of the other, the public undoubtedly learns something about the actual conditions and problems of the state.

The formation of political parties in each state is largely conditioned by its own traditions, customs and political problems. These will be discussed later at appropriate places.

The Civil Service in a State. While the party system corrects the efforts of the executive and keeps it alert in the discharge of the responsibility of government, the Civil Service which is the extended arm of the executive, conducts the actual administration in accordance with the principles of the party in office. It consists of a huge army of officials of different grades, recruited largely on a permanent basis. The officials are expected to possess abilities necessary for the conduct of their respective particular duties. The large volume of functions of the state impel the government to maintain such a service which is distinguishable from the real cabinet arm by the permanent nature of the former whose personnel does not change with the change in the ministry. The party may come into office or go out of it, but the permanent civil servants continue to function. Without criticising the policy of the party in office, they are required to carry out its orders and instructions impartially. The civil servants are permanent servants and at the same time direct governors. Therefore, it is upon their

character and ability that the actual administration depends, for the policy of the executive, may be to promote the best interests of the citizens, but unless the vast organisation of civil servants loyally co-operates in putting into practice the details of the policy, the desired results cannot be achieved.

The Judiciary in a State is the Third Organ of Government. The third organ of government is the Judiciary. As soon as men organised themselves into society, the possibility of disputes and quarrels between themselves, or between them and their rulers became clear. How to settle these differences and disputes became an important problem for the state. No government can work merely by enacting laws and appointing officials to conduct the administration. It must also see to it that the laws are enforced, that breach of law is punished, that citizens can seek justice in the exercise of their rights and the discharge of their obligations. This work is entrusted to the judicial arm of the government.

Principles on which a judiciary works. The organisation, functions and principles of working of the judiciary in a state are determined either by the legislature and the executive in co-operation with each other, or are enumerated in the constitution itself. There are certain general principles upon which the judicial system of a modern state works. Imparting of justice being the chief function of the judiciary, the foremost essential principle is the impartiality in its working. Justice implies giving to each citizen his or her due. This is possible only when in the actual administering of laws justice is done impartially without fear of or favour for any one. Three conditions seem requisite to secure this impartiality. Firstly, the judges ought to be secure in their offices if they are to act fearlessly and without favour. They can hold the balances even between the disputants if they are convinced that their judgments would not, even if they offend the high and the mighty in the state, drive them out of office. This necessitates permanence of tenure and independence of executive control. Unless the executive is prevented from interfering with the administration of justice, the lurking suspicion in the minds of judges about their working unmolested will not disappear. Moreover, the judges must get adequate salaries to keep them above all temptations. Where the judiciary is corrupt and open to bribery there is no impartial justice. Money makes the conscience melt and judges being ordinary human beings are not free from the weakness. The chances of corruption and bribery can be minimised and even completely removed by a

system of remuneration which prevents all encroachment on their integrity. Secondly, the judges must be fully conversant with the law they have to administer. This is generally secured by prescribing high legal qualifications as a necessary condition for entry into judicial service. Thirdly, the system of justice, to be really impartial, must be within easy reach of every class of citizens, poor or rich and irrespective of their creed or race or any other artificial distinctions. This means the institution of graded courts, small judicial fees and provision for supplying free legal aid to poor litigants by the state. Prohibitive expenses in seeking justice prevent the poorer classes from seeking redress in courts of law. This perpetuates a sense of insecurity against the rich who by their longer purse strings can defeat the real purpose of justice and judicial courts. There should be courts of different grades with the highest appellate court at the apex, so that in case a litigant is dissatisfied with the judgment in a lower court he may appeal to the next higher one. Whatever may be the method of recruitment of judges, their infallibility cannot be guaranteed. Hence the necessity of providing appeals to higher courts.

Judiciary as the guarantor and protector of the rights of citizens. The judiciary is also the protector of the rights of citizens. By issuing injunctions it can compel the executive to refrain from doing a particular thing likely to encroach upon the rights of citizens or to do a particular thing which it must do to secure those rights. Law merely ordains, it is justice that really secures rights. Freedom of speech, of association and of faith, however emphatically they may have been declared in the constitution, are meaningless terms unless the judiciary helps the citizens to enjoy them in life. Security of person and property, the right to vote and participate in the activities of the state, all these and similar other rights are protected by a well-organised judicial system. A state that denies to the citizens their due against itself forfeits its claim to be called civilised. Plutarch aptly remarks: 'Nothing becomes a king so much as the distribution of justice..... justice is the rightful sovereign of the world'.

The judiciary, therefore, manned by persons of unimpeachable character, unmoved by fear or favour, undaunted by the frowns of the administrators, creates by its judgments conditions of liberty and freedom which create a sense of security in the minds of the citizens.

All modern constitutions, therefore, provide a judicial system which brings cheap and speedy administration of justice within easy reach of

all classes of citizens. There are, no doubt, differences in judicial systems of different states, but they relate more to the details of working than to the general principles on which they are founded. In federal states the judiciary occupies a peculiarly important position, as already discussed.[1]

Prior, in *Conversation*, 29 thus sings the praises of justice:

Strict justice is the sovereign guide
That o'er our actions should preside.
This queen of virtues is confessed
To regulate and bind the rest.
Thrice happy if you once can find
Her equal balance poise your mind:
All different graces soon will enter
Like lines concurrent to their centre.

Functions which the State should perform. If the state was organised to make life possible, it is continued to make it happy. For that purpose, it has a certain definite objective and this involves performing of certain functions. What ends should the state have and what specific functions should it perform? These are questions which have been answered by political thinkers in all ages, according to the needs of society, the circumstances and environments in which the discussion arose and the attitude with which they were considering the purpose of political societies. In all climes and ages political thinkers have profoundly influenced the course of events in states and thus paved the way for revolutions and changes in governments. That explains why different states have different conceptions of their duties, and, therefore, perform a variety of functions. They have had their peculiar origins and traditions; circumstances moulded them into so many forms; necessity, interest or even caprice of individual personalities variously guided them. The undertakings and activities of government, then, mirror the principles in operation and the objectives in view. What functions a government should perform must be determined by what that government is; what government is must, in its turn, determine what it ought to be.

Classification of Functions into Obligatory and Optional. The multiplicity of functions which governments perform enables a classification based on the nature and extent of those functions. There are some functions which every government has to perform, if not for

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[1] Ante, *pp.* 27-30.

any other purpose, at least to justify its existence or to continue to govern. President Wilson of America classified functions of government into two groups, *viz.*, obligatory and optional, or *Constituent* and *Ministrant*. The obligatory functions include the protection of life, liberty and property, together with all other functions that are necessary to the civic organisation of society. These functions are so essential that even the strictest *laissez faire* view would not deny them to the state. The protection so needed compels the state to maintain law and order. Other functions that fall into this category are: the fixing of legal relations between husband and wife and between parents and children; regulation of the holding, transmission and interchange of property; determination of liability for debt or crime, that is, prescription of penalty and punishment; enforcement of contracts between citizens; settlement of civil disputes between individuals; determination of political duties and privileges; dealings with foreign states.

The optional or *ministrant* functions which states perform are generally these; regulation of trade and industry, including coinage and currency; establishment of standards of weights and measures, etc.; regulation of labour, including the fixation of wages, hours of work, etc.; maintenance of means of transport and communications like railways, roads, post, telegraph and telephone systems; education; care of the poor and the imbecile; development of agriculture, industry and other economic projects.

The old conception of functions of state. In olden days, the conception of the functions of the state was so narrow and restricted that the state was hardly more than a magnified police body performing negative duties like not allowing molestation, theft, disorder, etc. Such a conception passed through changes till it yielded place to an entirely different one in the modern times.

Modern conception of functions of government. Modern governments perform, apart from the negative functions, a large variety of positive functions in return for allegiance of the citizens. The modern citizen has, *vis-a-vis* the government of his state, social, economic and political rights which the government must secure and protect. The industrial revolution, *i. e.*, the great economic change brought about by the machine age, has profoundly changed the nature and extent of governmental activities. These have been further widened by the growing conception of internationalism which has made sattes more and more interdependent on each other. The oft-repeated conception of the individualists, *viz.*, that government is the best which

governs the least, has in the face of growing socialistic tendencies, yielded place to omniparous powers of government. Modern governments have now begun to interfere with the minutest details of a citizen's life, even prescribing for him what to read, what to eat and how much to eat, what profession to follow, how to marry and how to divorce. The greatest inroad on citizen's liberty by the government has been in the economic field. On the one hand, governments in capitalistic countries are backing large-scale industries owned by private individuals by various laws favouring them; on the other, in socialist states there are definite attempts to bring all productive schemes under state control, leaving the individual little scope to disturb the economic structure of society. Even in states like the U. S. A., where the federal constitution delimits the powers of the central government, the essence of Rooseveltism, as contained in the National Recovery Act, or the later modification of Neutrality Act, was to promote economic welfare of the poorer classes.

Modern governments are daily enacting laws to increase their activities and curbing the unrestricted liberty of the citizen in order to make him happier. And in no other place is this more significant than in the economic field because of its touching the daily life of the citizen more intimately than any other governmental activity. The governments of Fascist Italy, Nazi Germany and Soviet Russia, had continuously been widening their control over the economic aspect of human life more than any other government. This is in strange contrast with what governments were permitted to do before the rise of socialist and fascist states which are based on an entirely new conception.

Is this freedom or liberty ? J. R. Lowell answers the question thus :

We are not free : doth Freedom then consist
In musing with our faces towards the past,
While petty cares and crawling interests twist
Their spider threads about us, which at last
Grow strong as iron chains, to cramp and bind
In formal narrowness heart, soul and mind ?
Freedom is recreated year by year,
In hearts wide open on the Godward side,
In soul calm-cadenced as the whirling sphere,
In minds that sway the future like a tide.

If such freedom is the end, governments ought to be restricted to those functions only which, while bringing the greatest happiness to the greatest number, do not take away from the individual his per-

sonal freedom to think freely, speak freely and follow the vocation of his choice. Restraints are necessary to safeguard liberty, but they should not cripple individual initiative and freedom.

In the existing circumstances of the world marked by a conflict of ideologies and an urge to convert all states to a single conception of life, communistic or fascist, even democracies have been forced to encroach more and more on the civil liberties of their citizens. There seems, therefore, little or no hope of restricting the scope of state interference with the life of the individual. On the other hand, in totalitarian states, state activity is so widening its sphere as to prescribe even minute details of social and economic life. Verily it is a paradox to find restrictions on freedom for the enlargement of freedom and all states are forced to increase their functions.

Select Readings

The literature on the subject of this chapter is vast. Most of the authors of Political Science have dealt with the subject in detail. The following works are specially recommended :

Bryce, V.—*Modern Democracies*—Vol. I.
Burns, C. D.—*Political Ideals.*
Coker, F. W.—*Recent Political Thought.*
Cole, G. D. H. and M. I.—*Modern Politics*—books V and VI.
Finer, H.—*Theory and Practice of Modern Government*—Vol. I, Chs. I, III, VII, XI, XIII, XVI and XVII.
Haldane, Lord—*The Future of Democracy.*
Laski, H. J.—*A Grammar of Politics.*
Laski, H. J.—*Liberty in the Modern State.*
Laski, H. J.—*Introduction to Politics.*
Michels, R.—*Political Parties.*
Ross, J. F. S.—*Elections and Electors* (1954).
Seeley, J. R.—*Introduction to Political Science.*
Wilson, W.—*The State.*

BOOK TWO

GOVERNMENT OF ENGLAND

Chapter

4. Evolution of the English Constitution.
5. Salient Features of the English Constitution.
6. Parliament: Its Growth and Sovereignty.
7. Parliament: Composition and Legislation.
8. The Executive: King and Cabinet.
9. The Whitehall and the Civil Service.
10. The English Judiciary.
11. English Local Government.

Britons and Romans, Saxons and then Danes,
So many conquerors have taken it,
I seldom marvel any land is left.
Yet oak trees grow, and daisies star the grass,
And blissful birds sing, blithely as of yore;
Sheep bleateth, and mild-eyed cattle chew
Their peaceful cud. Men waggon up the hay
And ear the soil and breed the olden way,
As if the conquerors have never passed.

—JAMES F. WRIGHT

* * *

Many persons in whom familiarity has bred contempt, may think it a trivial observation that the British Constitution, if not (as some call it) a holy thing, is a thing unique and remarkable. A series of undersigned changes brought it to such a condition, that satisfaction and impatience, the two great sources of political conduct, were both reasonably gratified under it. For this condition it became, not metaphorically, but literally, the envy of the world, and the world took on all sides to copying it.

—SIR HENRY MAINE

4

EVOLUTION OF THE ENGLISH CONSTITUTION

> The British Empire is held together by a Constitutional Monarchy, which is none other than the old Constitutional Monarchy of England, married to the old Monarchy of Scotland and extended to embrace new nations overseas. It owes its constitutional character not to any single event or movement, but to a process of growth at last as old as the Norman Conquest. We might, indeed, look back still farther, to the Saxon Kings under whom the realm of England and its shires came into existence, most of all to Alfred, the test of our Kings, who in his life and character seems an English Constitution in himself.
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> —G. M. TREVELYAN.

Anglo-Saxons in England. It was about the middle of the fifth century that the Angles, Saxons and Jutes, who had come to help the Britons against the Picts and Scots, settled down in Britain. These newcomers changed the form and character of the British institutions which were a curious admixture of the Celtic and Roman cultures. A number of states grew up under different warrior conquerors, all owing a weak allegiance now to one and then to the other of them. A very important feature of the immediately following period was the rise of a class of warriors called *Thegns* who held the land on somewhat feudal terms and served their kings in times of war.

Influence of Christianity on Britain's Life. Towards the close of the sixth century, 597 A. D., the conversion of the English to Christianity introduced a higher civilisation in Britain, which exercised an important influence on its social and political life. The universal Christian Church brought the English into close relationship with the European political society and they began to regulate their own political assemblies on the pattern of the ecclesiastical synods. [1]"From the first the church entered into the closes alliance with the state and

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[1] Taswell-Langmead : *English Constitutional History*, p. 8.

while paying respectful deference to the Roman See, grew up with a distinctly marked national character'. During this period of Heptarchy there were a number of petty kings all over the land. The great historian Bede mentions seven of them, but the three kingdoms of Wessex, Mercia and Northumbria were predominant. King Egbert of Wessex compelled the other kingdoms to accept his sway and assumed the title of 'King of the West Saxons'. Christianity, which acted as a unifying force within each individual kingdom by supporting the centralisation of power under the monarchy, did not supply any motive towards national unity until, in the face of a common heathen danger, it brought the rival peoples together. English unity was largely the result of the well-disguised blessing of Danish invasion from the north which began about 793, but became very serious only fifty years later.

Alfred unifies England. The real crisis of the Danish invasion came in 871, the year Alfred, the fourth grandson of Egbert, became King of Wessex. In 878, Alfred won a decisive victory at the battle of Ethandon and compelled the Danish leader Guthrum to sign the Treaty of Wedmore which while recognising Danish sovereignty over northern Britain secured the integrity of Wessex. Alfred then directed his attention to consolidating the power of Wessex. He strengthened the army, started a navy, reformed the laws and encouraged learning and patriotism.

British Institutions before the Norman Conquest. The land belonged to the king who was the centre of society. He had divided it among earls and thegns on feudal principles. The monarchy was held by heredity, but on the death of a king the ablest of his sons or some other member of the royal family was elected as his successor and not necessarily the eldest son. The king derived his revenues largely from his large estates and a portion of the fines and forfeitures imposed by local courts. Though the king was not yet the fountain of justice—for there were local courts of the feudal lords and tenants-in-chief—his justice was slowly superseding that of the latter.

The Witenagemot: Its composition and functions. The king, however, did not exercise unlimited power over his subjects. The Witenagemot exercised large powers and thus placed great restrictions upon the king's authority. This body may well be considered 'the supreme council of the nation'. It was generally attended by every freeman. It was, no doubt, an aristocratic body consisting of 'the king, the ealdormen or governors of shires, the king's thegns, the

bishops, abbots and generally the *principles* and *sapientes*'. The latter term meant 'witan' or 'wise men' which was the title given to those who attended its meetings and that is also why it was called Witenagemot or assembly of the 'wise men'. Its powers were quite extensive. 'It could depose the king; it elected the king; it had a direct shape in the general administration. In conjunction with the king, the witan enacted laws and levied taxes for the public service; made alliances and treaties of peace; raised land and sea forces when occasion demanded, sanctioned royal grants of bookland, appointed and deposed the bishops, ealdormen of shires and other great officers of church and state; adjudged the lands of offenders and intestates dying without heirs to be forfeit to the king; and authorised the enforcement of ecclesiastical decrees. Lastly, the witan acted from time to time as a supreme court of justice both in civil and criminal cases'.[1] It was, in short, modern Parliament in embryo. Though the powers of the witan were large and extensive, they were not always exercised. It all depended upon the character and personality of the king.

The country was divided into villages, each village bearing the name of the family that had established it. A group of hundred villages or so formed the next higher administrative area called *the Hundred.* A number of Hundreds formed the *shire* which was the largest administrative subdivision of the kingdom.

There is a considerable difference of opinion among historians regarding the exact powers and composition of the bodies and functionaries of the administrative areas. In the shire, the highest officer of the king was the Ealdorman appointed by the king. He was generally a member or relation of the royal family and exercised military and civil powers. He presided over the *shire-moot*, the appellate court for the shire, which was convened by the *sheriff* (an elected officer of the shire) and consisted of, besides the ealdorman, the bishop, lords of lands, all public officers, the parish priests and a few representative men.

The Hundred was a sub-division of the shire and had its local court called the *Hundred moot* which was presided over by the sheriff or his deputy and consisted of a number of judges numbering twelve or a multiple of twelve. It exercised civil and criminal jurisdiction as an original court.

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[1] Ibid, p. 27.

England under the Normans. The battle of Hastings (1066) marked a turning point in the constitutional history of England. William I, the Duke of Normandy, defeated the English King Harold and ascended the English throne as the first Norman 'King of the English'. At the time of his coronation he took the ancient coronation oath. He followed the old laws of England and tried to govern as a constitutional King. He forfeited the land of the barons who had fought against him and divided it among the Norman nobles who had helped him, on promise of their rendering military aid in times of need. The barons were obliged to take oath of allegiance to the king and seek justice in his courts. The spiritual courts were separated from the civil courts, but supremacy of the state over the church was preserved by laying down that no pope could be acknowledged nor any papal orders received without the king's permission, that the decisions and decrees of the national synods were not binding unless confirmed by the king, and, finally, that no barons or government officers could be excommunicated without the king's permission.

The rise of a new class of barons in the time of the conqueror presented serious problems, later, to William II who put down two insurrections of the barons with the help of the English. It was during the time of Henry I that the first Norman charter of English liberties was granted by the king. The charter was subsequently reissued by the later Norman kings as well as by Henry II who founded the Angevin or Plantagenet dynasty in which the rule of King John is considered to be the most important period of English liberty.

Magna Carta of English Liberties, 1215, A. D. During the reign of John, the barons and clergy who were the leaders of the realm rose into revolt. They conspired together to force the king to grant the Great Charter whose provisions reflected the distrust of the king in all classes of people. He had quarrelled with the nobles as well as the papacy. The Magna Carta is considered to be the first of the three great charters, the other two being the Petition of Right and the Bill of Rights, which according to Chatham, constitute 'the Bible of the English constitution'. Examined carefully, it will be seen that the Magna Carta is merely 'restorative' as it simply reduces to writing the rights and liberties enjoyed before 1215. Besides the Preamble, it contains 63 other clauses which are set without any clear plan. Firstly, it reiterates the feudal obligations and restricts the demands of the king against the barons. Secondly, it simplifies the judicial system by declaring that (*i*) the common Pleas shall be held in fixed places, (*ii*) the

earls and barons shall not be amerced but by their own peers and according to the degree of the offence, (*iii*) no sheriff, constable, coroner, or bailiff of the king shall hold pleas of the crown, (*iv*) no freeman shall lose his court, (*v*) no bailiff shall give his decision without hearing credible witnesses, (*vi*) only persons well versed in law shall be appointed as justices, sheriffs and bailiffs, etc. Thirdly, it defined the fundamental principles of the constitution. No scutage or aid could be imposed except in the three cases specified in the charter. To convene the witan individual summons would be issued to archbishops, bishops, abbots, earls and greater barons, while tenants-in-chief would be summoned by a writ issued to the sheriff of each shire. Justice would neither be sold nor denied to any one. Fourthly, the rights of cities and boroughs were reiterated and certain commercial rights were defined. And fifthly, restrictions on the king's exactions were specifically laid down.

This charter, though it largely related to the rights and liberties of the higher classes, was confirmed six times by Henry III, three times by Edward I, fourteen times by Edward III, six times by Richard II, six times by Henry IV and once each by Henry V and Henry VI. This clearly demonstrates the importance which people, particularly the barons and the clergy, attached to it as the bulwark of their rights and liberties.

English Constitution Under the Angevins. The Magna Carta opened the way for the people to demand more and more freedom from the king's autocratic rule. The reign of Henry III is, therefore, noted for far-reaching changes in the constitutional position of the king. Henry III had ascended the throne as a minor ; the council that had been set up to rule England during his minority contrived to increase its influence, so that when he came of age he had to seek its advice. By this time the council had come to be known as the *Privy Council*. Later on, Henry's foreign favourites gradually increased their power. As an unavoidable result of this, great dissatisfaction and disorder spread in the country.

Provisions of Oxford, 1258. In 1258 matters reached a crisis when the barons called a great council, the 'Mad Parliament' at Oxford to draw up articles containing their demands and known as the *Provisions of Oxford*. The revolting attitude of the barons forced the king to accept these provisions as the basis of future administration. According to this new scheme a council of fifteen, composed of bishops and barons, was appointed to advise the king in the administrative work.

Every three years, Parliament was to be summoned to which besides these fifteen members twelve more representatives of the barons and twelve nominees of the king were to be added. This gave the nobles a voice in the government, but the common people were still unrepresented.

Simon de Montfort becomes leader of Barons. Though at first willing to accept the advice of this enlarged body, Henry openly refused in 1261 to abide by the Provisions of Oxford. The barons accepted the challenge; civil war broke out and after suffering defeat in the battle of Lewes, on May 14, 1264, the King and his son Edward, surrendered. At this time Simon de Montfort had become the acknowledged leader of the barons against the king. He has often been acclaimed as the leader of the common people. He is termed 'the founder of representative government' by Guizot, the French historian, while Pauli, his German biographer, calls Simon 'the father of the House of Commons'. The truth is that he is neither, as may be seen from historical evidence. Montfort was a Norman adventurer, a picturesque but mottled one, who owed his early advancement to the favour of his brother-in-law, *i. e.*, Henry III, and displayed no predilections in favour of popular representation until the latter seemed to fit the exigencies of his own cause. It so happpened, however, that his own interests coincided for the moment with fundamental drift in English constitutional development. The towns were growing in population and wealth. Parliament could not for ever continue to ignore them. Representation was bound to come. Simon merely made a premature gesture in the direction of according it.

Simon's Parliaments of 1264 and 1265. To give political battle to the king what Simon did was to summon the parliament in 1264, inviting to it four representatives of each county, besides those of the ecclesiastics and barons who were till then entitled. This parliament decided to entrust the government of the country to a committee of nine members with Simon as its head. In 1265, Simon again summoned parliament to which he invited not only the *knights of the shire* but also representatives from all big cities and boroughs. This was undoubtedly the first step towards the establishment of democratic government in England and for this the credit goes to Simon.

Constitutional Reforms of Edward I. Edward I succeeded his father Henry III in 1274. His parliaments introduced many constitutional reforms. The *First Statute of Westminster* was passed in 1275, which fixed the land tax and provided for free elections to parliament.

In 1278 the *Statute of Gloucester* was passed to ascertain the title or authority by which the barons held their land and resulted in tightening the king's control over the barons. The *Statute of Mortmain*, 1279, curtailed the power of the bishops to compel dying people to endow their lands in favour of the Church. The *Second Statute of Westminster*, 1285, made succession to a freeman's land hereditary by settling it on his eldest son. The *Statute of Winchester*, 1285, provided for the defence of the country and for police of the towns and parishes. According to other reforms, the Courts of Chancery and King's Bench were to follow the person of the king.

The Great Parliament of 1295. The most important constitutional reform of Edward I was the summoning of the *Great Parliament of* 1295, to which the representatives of all the three estates of England, *viz.*, Bishops, Lords and Commons, were invited. There was not a borough left that did not send a representative. This parliament was, therefore, named the *First Complete and Model Parliament.*

Hundred Years' War and Parliament. The outbreak of the Hundred Years' war in 1338, led to important constitutional changes. Till then the three estates in parliament used to sit, confer and vote together in the same room, though the barons usually carried their own will. Later, the barons and the clergy occupied a separate room for their deliberations and thus laid the foundation of the House of Lords, leaving the representatives of the counties and boroughs to form a separate chamber, the House of Commons. By the end of Edward III's reign, in 1377, the bifurcation of parliament into two Houses was completed, the upper house representing the feudal elements and the lower the non-feudal class. At first the meetings of parliament were irregular, but in 1330 it was enacted that 'A parliament shall be holden every year once and more often if need be', and this was reiterated in 1362 with the declaration of specific purposes of the meeting thus: 'For redress of divers mischiefs and grievances which daily happen a parliament shall be holden every year'. Towards the close of Edward III's reign, the lower house succeeded in establishing its three-fold right, *viz.*, (*i*) taxation without its consent was illegal, (*ii*) concurrence of both houses in legislation was necessary, and (*iii*) the Commons had the right to inquire into the abuses of administration and amend the same. It was the exigencies of the war that had forced the kings, who were hard pressed for money, to succumb to paliamentary control over finances and legislation. The centre of gravity in parliament had decidedly begun to shift from the Lords

to the Commons.

The Evolution of the Judiciary in England under Normans and Angevins. The evolution of the judicial system under the Normans and Angevins affords interesting study. The king was at the head of the whole administrative system including the judiciary. In the beginning the king himself attended the courts and dispensed justice, but the heavy responsibility of administrating his French domains necessitated his presence on the continent for long periods. Therefore, for the period of his absence from England, the king appointed his chief minister, the *justiciar*, as supreme administrator of law and finance. Edward I dispensed with the office of the justiciar and transferred the duties so far performed by the justiciar to the Chancellor, an office created by Edward the Confessor. In this way began the imparting of justice by the Chancellor.

Apart from the justiciar and later the Chancellor, there was an important body, the *Curia Regis*, which performed judicial functions. At first it was called Great Council of the Realm, with a small body of officials called the *curia* which performed all the judicial functions which, later on, were distributed between the King's Bench, the Court of Common Pleas and the Court of Exchequer. The last of these was concerned with cases dealing with taxation and finances. The civil disputes were placed under the Court of Common Pleas while all other business was confined to the Court of King's Bench. This division was effected towards the close of the reign of Henry III.

In the time of Henry I, some of the judges of the Curia Regis were required to go from county to county to collect revenue, decide disputes and punish offenders. These were the *Itinerant Judges*. Henry II divided (in 1176) the whole kingdom into six circuits, each of which was placed under three itinerant judges who thus formed the circuit court which became the link 'between the Curia Regis and the Shiremoot, between royal and popular justice, between the old system and the new'. Henry II also introduced the system of *trial by jury* in criminal cases. It was extended, later, to civil cases as well. The jurors were at first sworn witnesses who were expected to tender (on oath) evidence in a case giving out true and full facts.

While this evolution of the judicial system was taking place, the King's Great Council, later called the Continual Council (Magnum Concilium), continued to exercise its extraordinary jurisdiction. Though in theory the court consisted of all the barons, the clergy and the commons who formed the three elements of the Council (the

predecessor of parliament), the commons really took no part in the judicial work of the Council. Consequently, the peers alone performed the judicial work and when they formed a separate house (the House of Lords) they sat in it in the double capacity of members of a deliberative body and of a judicial council. Later on, the judicial work was, in practice, performed by a smaller body of the lords, called the Privy Council.

Constitutional effects of the Wars of the Roses. Such was the system of administration in England till the outbreak of the Wars of the Roses between the houses of Lancaster and York. These wars lasted for thirty years (1455-1485) and when they ended, great constitutional changes took place in the country. The power of the barons who were divided between the Yorkists and the Lancastrians was shattered and, therefore, their too great influence with the king was gone. The great sufferings occasioned by the wars impoverished the people who willingly allowed Henry VII to assume extraordinarily large powers to restore peace and order. The accession of Henry VII was accepted by Parliament and this established its right to elect the king.

Establishment of Tudor Despotism. The first two Tudors, Henry VII and Henry VIII, used the opportunity to extend monarchic power; and they succeeded in establishing a despotic rule. Though Parliament still continued to sit regularly, it was used by the Tudor despots as an engine of despotism. They manœuvred the elections to Parliament of persons subservient to their own will and thus raised taxes to enrich their treasury. They established the Court of Star Chamber and the High Commission Court to suppress the baronial power. The quarrel which Henry VIII picked up with the Pope, over the question of his wife's divorce, resulted in the establishment of the Anglican Church over which the king's influence through the Cardinals was very great. The religious disputes and persecutions during the reigns of Edward VI and Mary, and the clever policy adopted by Queen Elizabeth to hold a balance between the Catholics and the Protestants, directly increased the royal power. The Renaissance produced far-reaching results. England became a naval power; her commerce increased; the trading companies that were formed under royal charters increased the prosperity of the masses who began to think of their rights *vis-a-vis* the sovereign. The tide of a general demand for popular rights against the growing despotism of the Tudors was stemmed, very successfully, by Queen Elizabeth who treated her ministers like children as if they knew little of strategy and politics.

Constitutional Changes during the Stuart period. With the accession of James I to the throne of England in 1603, began the rule of the Stuarts whose theory of kingship and policy of government precipitated, at least twice, grave crises resulting in constitutional changes of a far-reaching character. James I propounded his theory of divine right of kingship, which consisted of four propositions, *viz.*, (*i*) that the kings derived their ruling power directly from God, (*ii*) that the authority of the kings was absolute and unlimited, (*iii*) that resistance to the king was unlawful under every circumstance and (*iv*) that kingship was hereditary descending to the eldest male line of a monarch. Because of these views, James I came into direct conflict with his parliaments. The crisis was quickened by the religious policy of the king who refused any liberty to the Roman Catholics, as the latter exalted the authority of the Pope as against that of the king. The Puritans were also dissatisfied with the king's policy. Therefore, when his first parliament met, the discontented element succeeded in making the Commons demand of the king recognition of popular rights including the right of the Commons alone to sanction taxation. James I, while outwardly pretending to respect the privileges of the Commons, was planning to free himself from their bondage and from 1611 to 1614 he ruled without a parliament. When he summoned his second parliament in 1614, the conflict over 'redress of grievances before supplies' resulted in its dissolution. Thereafter the king ruled for another six years without a parliament. The third parliament, convened in 1621, again insisted on recognition of their freedom of speech, immunity from arrest and the right to censure the king's advisers. Thereupon the king dissolved the parliament. In 1624, however, the king, then in a more conciliatory mood, convened his fourth parliament and accepted most of their demands and thus parliamentary prestige and power rose higher.

Charles I and his parliaments. Charles I, the second Stuart king, succeeded his father James I in 1625 and like him believed in the divine right of kings. He pushed his views of the absolute authority of the kings too far and would not recognise the position of parliament and the necessity of ruling with its advice. But financial pressure forced him to convene parliaments. His second parliament, convened in 1626, impeached the king's adviser, Buckingham. This brought the king into direct conflict with this parliament which he dissolved. In 1628, he had reluctantly to convene the third parliament under pressure of raising money. But before voting any supplies, the Commons

resolved that no taxation without their approval was legal and protested against the king's arbitrary rule.

The Petition of Right, 1628. Basing their ancient rights and privileges on the Magna Carta and subsequent charters of liberty, they prepared the *Petition of Right* containing their demands which included, (*i*) stopping of illegal exactions as already declared in the time of Edward I that 'no tillage or aid shall be levied by the king or his heirs in realm, without the good will and assent of the archbishops, bishops, earls, barons, knights, burgesses and other freemen of the commonalty of this realm,' and further clarified by Parliament in the time of Edward III, that 'it is declared and enacted, that from thenceforth no person shall be compelled to make any loans to the king against his will, because such loans were against reason and the franchise of the land,' (*ii*) freedom from arbitrary imprisonment as declared and enacted in the Magna Carta and re-iterated by Parliament during the reign of Edward III; (*iii*) non-application of martial law as previously declared in the Magna Carta and by a parliament of Edward III, (*iv*) protection of the rights and liberties of the subject according to the laws and statutes. This second pillar of English liberties was merely a summary of the rights which had already been recognised by previous kings and contained nothing new. The king granted the petition, finding no other way to get out of the crisis. Thereafter parliament granted to the king Tonnage and Poundage for life, but abolished the *Ship Money* and the *Court of Star Chamber* and the *High Commission Court*. Secretly, however, Charles I tried to bring up the army against parliament and thus re-established his absolutism. On getting knowledge of this, parliament drew up the *Grand Remonstrance* containing a dignified assertion of its rights and privileges and appealed to the king to respect the same. The conflict between the king and parliament developed into the Civil War which cost Charles his head and resulted in the establishment of the Commonwealth according to the Instrument of Government. The House of Lords was abolished and so was monarchy; the House of Commons was purged of all royalist elements; England was placed under a new head of state, the *Protector* of the realm.

The Restoration of 1660. The Commonwealth lasted for over a decade (1649-1660) during which the inadequacy of the administrative machine became apparent. Parliament decided to restore monarchy and placed Charles II, son of Charles I, on the throne in 1660. The new king promised to respect the rights and privileges of parlia-

ment and his subjects. The most important constitutional gain during his reign was the passing of the *Habeas Corpus Act*, 1679, which secured the personal liberty of every citizen by requiring every court, on receipt of a complaint in writing, produced on behalf of any person committed and charged with any crime, to order production of the prisoner before the court to stand a regular trial. Like his father, Charles II also tried, later, to rule despotically, but parliament did not take any drastic step as it was painfully reminded of the Commonwealth period.

The Glorious Revolution of 1688 and its constitutional results. James II succeeded his brother, Charles II, 'with a fixed design to make himself an absolute monarch and to subvert the established church.' He exacted illegal customs, increased the army, established a new High Commission Court to get judicial decisions in his own favour and in 1687 and 1688 issued two Decisions of Indulgence which interfered with the powers of the established church. All this irritated parliament which invited William of Orange, son-in-law of the king, and his wife Mary to come to England and accept the throne. On hearing of this, James fled the country (December 23, 1688). The Convention Parliament met on January 22, 1689, and six days later passed two resolutions, *viz.*, (1) 'That King James having endeavoured to subvert the constitution of this kingdom by breaking the original contract between king and people and by the advice of Jesuits and other wicked persons, having violated the fundamental laws and having withdrawn himself out of the kingdom, has abdicated the government and that the throne is thereby vacant,' (2) 'That it hath been found by experience to be inconsistent with the safety and welfare of this protestant kingdom to be governed by a popish prince.'

The Bill of Rights, the coping stone of the constitutional building. Parliament drew up the *Declaration of Right* reciting the illegal and arbitrary acts of James II, and settling the crown on William III and Mary and William 'thankfully accepted speaking for himself and his wife, what they had offered them'. The joint sovereigns accepted the *Bill of Rights* passed by the Convention Parliament in its second session on October 25, 1689. This was the third charter of English liberties which completed the constitutional structure raised on the foundations of the Magna Carta. This Bill recited the illegal acts of James II, *e.g.*, dispensing and suspending of laws, erecting the High Commission Court, levying unauthorised taxes, raising and keeping a standing army in time of peace without consent of Parliament, interfering with the freedom of elections, exacting fines and for-

feitures before conviction, etc. It then settled the crown on William III and Mary and excluded from succession, in future, papists and persons marrying papists ; it required every succeeding king or queen to make a declaration to this effect. It abolished the dispensing power of the kings.

In 1701, Parliament passed the *Act of Settlement* which settled the crown, in the event of Anne's death (without leaving an heir) on the Princess Sophia of Hanover and her heirs and successors. This Act contained very important constitutional provisions securing the religion, laws and liberties of Englishmen and stated :

> (1) That whosoever shall hereafter come to the possession of this crown shall join in communion with the Church of England as by law established.
>
> (2) That in case the Crown and Imperial Dignity of this realm shall hereafter come to any person not being a native of this kingdom of England this nation be not obliged to engage in any war for the defence of any dominion or territory which do not belong to the Crown of England without the consent of Parliament.
>
> (3) That no person who shall hereafter come to the possession of this Crown shall go out of the dominions of England, Scotland or Ireland, without the consent of Parliament.

It also required every succeeding king or queen to respect the laws and statutes of the realm and secure rights and liberties of the people.

Beginning of two political parties. The direct and immediate consequences of the Glorious Revolution were the Bill of Rights and the Act of Settlement, but the indirect and remote ones were of a peculiarly far-reaching character. The Civil War had divided Parliament and the country into two camps, *viz.*, the supporters of Charles I, and the parliamentarians who opposed the Stuart despotism. The Restoration, for a time, minimised the cleavage between these parties, but the Glorious Revolution again brought them into prominent relief. Those who still clung to James II and his son were called the Tories and those who stood for the Glorious Revolution and the House of Hanover were known as the Whigs. The Tories had attempted, without success, to restore James II and kill William III. In the beginning the parliament of William III had a Whig majority, but he chose a coalition ministry. His third parliament (1695-98) too had a Whig majority which enabled him to set up a purely Whig ministry.

Thus the principle depending upon a ministry which had the backing of a majority in Parliament was for the first time recognised in England.

Policies of the Whigs and Tories. The Whigs held that the sovereign was the servant of the people and, therefore, bound to rule in accordance with the wishes of Parliament. The Tories, on the other hand, believed in the divine right of kings and were drawn largely from the House of Lords or landed aristocrats and the clergy.

This division of the politically minded Englishmen into two parties became, later on, so widespread in the country and created such a schism between them that Voltaire had to write: 'It is a pleasure to read the books of the Whigs and the Tories; listen to the Whigs, and the Tories have betrayed England; listen to the Tories, every Whig has sacrificed the state to self-interest. So that if you believe both parties there is not a single honest man in the nation.' The subsequent constitutional history of England became very much a fight between the two parties for the establishment of their principles in the government of the country.

The character of parliaments during the reign of Queen Anne (1702-14) varied from one election to another. She appointed some times coalition cabinets and at other times a homogeneous cabinet from one party alone, but from 1708 onwards all her ministries were homogeneous. The Whigs and Tories, besides differing on political questions, had differences of opinion on ecclesiastical and social questions as well. The Whigs stood for freedom of worship and freedom of serfs and tenants of manors. The Tories stood for the Anglican Church and the rights of the landed magnates and the clergy.

Party Government Under the Hanoverians. With the accession of George I in 1714, the first Hanoverian king of England, under the Act of Settlement, the powers of the ministry increased. He did not understand English and was, therefore, compelled to leave all work in the ministry to his chief minister who under the circumstances presided over the meetings of the ministry and formulated the policy of administration. It was, thus, by accident that the real power of administration passed from the king to his ministers. The first ministry of George I was a Whig ministry led by Townsend. Till then elections to Parliament were held every three years under the Triennial Act of 1694. But in 1716 was passed the *Septennial Act* which, besides confirming the Hanoverian and Protestant succession, increased the duration of Parliament to seven years. Due to this longer duration, Parliament became more independent of the control of the Crown.

Walpole, the First Prime Minister. In 1721, Walpole formed his ministry and became the chief minister and First Lord of the Treasury and Chancellor of the Exchequer. He thus became the first Prime Minister of England, who initiated the policy of administration, supervised the policy of the cabinet, led the House of Commons, and, when necessary, bowed to its adverse vote. When defeated in 1742, in the House of Commons, he resigned and thus set the first example of cabinet responsibility to Parliament. Walpole was successful in strengthening the power of the Prime Minister (though this term was officially used to designate the chief minister only in 1760) because of the first two Georges' ignorance of the English language and customs. The important members of his ministry formed an inner body, called the cabinet, which was a much smaller body than the greater council, the Privy Council, which consisted of all the principal advisers of the king.

Rise of the Cabinet System. The rise of the cabinet system was the direct result of the parliamentary struggle which had been in existence in some form or the other since the time of Charles I. It was, however, during the reign of the first two Hanoverian kings that the cabinet began to dominate the administration and the king practically ceased to guide its work and activities. When George III ascended the throne, he began to interfere with the policy and work of his cabinet, for he was brought up in England and was thoroughly acquainted with the customs of the country and the policies of the various parties. Such interference from the king after a lapse of over three decades was resented by the ministry. The long struggle between the king and the Whigs resulted, for a time, in the victory of the former who appointed Lord North, the Tory leader, as his Prime Minister in 1770. But the subsequent loss of the thirteen American Colonies (as a result of the War of American Independence, 1770—1783), brought about the fall of the Tories and the rise of the Whigs. Sometime later, the formation of a coalition ministry by Pitt, with the backing of a vast majority in the House of Commons, practically put an end to George III's attempt to re-establish personal rule. Thus, Pitt's virile character and far-sighted policy strengthened the position of the cabinet. During the period the struggle between the king and his ministers was going on, the House of Commons had added to its powers by completely controlling elections and deciding its own procedure.

It was also during the reign of George III that an Act was passed (1760) which completed the independence of the judiciary, by laying down 'that the commissions of judges for the time being shall be,

continue and remain in full force, during their good behaviour, notwithstanding the demise of His Majesty or any of his heirs or successors.'

Constitutional Reforms of the XIX Century. The later Hanoverians reigned during the nineteenth century which is remarkable for constitutional changes that have led to the establishment of a truly democratic Government in England. These constitutional changes introduced democratic principles both in the central and the local government and in legislation.

Their Reasons. The reasons that lay at the bottom of the series of the nineteenth century reforms were : firstly, the after-effects of the French Revolution had revolutionised men's minds in Europe regarding the place of monarchy and aristocracy in society and the rights of the masses *viz-a-viz* the government of the country. The Revolutionary principles of Liberty, Equality and Fraternity had spread throughout Europe and though the Congress of Vienna (1815) had tried to undo the work of the French Revolutionaries by establishing monarchic rule and upsetting the Napoleonic arrangements, the Liberal Movement of 1848 was the direct consequence of those principles. In England, statesmen kept in check the spread of these principles, yet they realised the necessity of reforming the political machinery after the Revolutionary wave had subsided. Secondly, the industrial development of the XVIII and XIX centuries had completely changed the social conditions in the country. Parliament was, till then, a body of the aristocrats and their nominees. The right of vote was very restricted and confined to the old cities. The industrial development had brought into existence large cities and industrial centres towards which there was a rapid movement of population from other towns and the rural areas. These industrial cities had no representation in Parliament, whereas several boroughs that had been depopulated (due to migration to industrial centres) sent large numbers of representatives. In some cases barons merely nominated members of Parliament; a few of the boroughs had no voters but still continued to be represented. These pocket and rotten boroughs, therefore, exercised too great an influence while big cities like Birmingham were wholly unrepresented. Such a state of affairs could not last long as it created considerable discontent in the prosperous new boroughs. Thirdly, the intellectuals and philosophers of the XIX century, like Bentham and Cobbet, had placed new ideas before the people whose conscience was roused to a realisation of their rights in society. Although even towards the end of the eighteenth century attempts were made by several statesmen to

reform the political system, they bore no fruits; in the nineteenth century the old system could not work smoothly.

The Reform Act of 1832. Therefore, on December 12, 1831, Lord John Russell introduced the Third Reform Bill (the earlier two in 1831 could not be passed) which passed through its third reading in the Commons on September 21, 1832. The Lords too withdrew their opposition and passed it after the king had threatened to create more Whig peers to form a favourable majority. Three important changes were introduced by this Act: firstly, fifty-six pocket and rotten boroughs with less than 2,000 population each were deprived of their representation (which numbered 111) in Parliament; thirty others lost one member each and one lost two members; these 143 seats were then distributed between the counties and boroughs that had either no representation at all or were not adequately represented. Secondly, the franchise was extended. All rent payers of £10 a year, and lease-holders and tenants-at-will paying £50 a year were enfranchised. Thirdly, regulations for conduct of elections were laid down to stop corruption and bribery. Thus, after 1832, the House of Commons became more truly representative of the masses than it had been ever before.

Demand for Social Reforms. The reforms of 1832, however, did not satisfy the advance guard of those who wanted to protect the rights of workers and masses. Already there had been in existence a movement for ameliorating the condition of the labourers and mill-hands, started curiously by Robert Owen (1771-1858) who was a self-made man and owned a great cotton mill in Scotland. He insisted on the state performing its duty to the workers and himself made a beginning by removing the children under ten years of age from his factory, limiting hours of work for the adults, constructing healthy dwelling and pleasure grounds for the workmen, and starting co-operative societies for supply of provisions to workers. He published two books, 'A New View of Society' in 1813 and 'A Book of the New Moral World' in 1836-44, which enunciated his principles of social reform. In 1836, the *London Workmen's Association* was founded to push forward the programme contained in the *People's Charter* issued by them.

The Chartist Movement. This charter was so named because it was to serve the interests of the masses. The association addressed the workers of the whole kingdom in these words: 'If we are fighting for an equality of political rights, this is not done in order to shake off an unjust tax or to effect a transference of wealth, power, and influence

in favour of any one party. We do so in order to be able to cut off the source of our social misery and by successive methods of prevention to avoid the infliction of penalties under unrighteous laws.' The adherents of the Charter styled themselves 'Chartists' and their movement is known as 'The Chartist Movement.' Their main demands, as enunciated in the Charter, were: universal manhood suffrage, annual elections to Parliament, equal electoral districts, vote by ballot (to insure secrecy of voting and thus avoid undue pressure on voters by the rich), removal of property, qualifications for members of Parliament, payment of salaries to members (to enable poor persons to seek election and devote themselves to active participation in the government of the country). Both the political parties, the Liberals and the Conservatives (the new names adopted in 1830's by the Whigs and the Tories respectively) combined to resist the Chartist Movement which was killed within a few years.

The Second Reform Act of 1867. Although the Chartist Movement could not produce any immediate tangible results, the reforms demanded by it could not be postponed indefinitely. The Act of 1832 fell short of the exigencies and environments of the time, particularly in view of the growing industrialisation and the rise of the utilitarians who stood for 'the greatest good of the largest number.' The result was the Second Reform Act of 1867. By this, Parliament widened the franchise. The borough franchise was extended to all the householders who had put in a year's residence and paid poor rates, and also to dwellers of lodgings of the annual rental value of £10. In the county boroughs, the occupation franchise was reduced to £12. Eleven boroughs were disfranchised while the representation of thirty-five of them was reduced from two to one each. The seats thus saved were given to large towns and to English counties. By this Act the representation of minorities was secured to a certain extent.

The Reform Act of 1884. Five years later, in 1872, the movement for further reforms was revived. Most of the Liberals demanded extension of franchise, equal electoral districts, and payment of members of Parliament. Gladstone, then Prime Minister, agreed to introduce reforms. Accordingly, on December 6, 1884, was passed the *Third Reform Act*, officially called the Representation of the People Act, 1884 (48 Vict. c. 3), which gave to the county the same franchise as had been given to the borough in 1867, and enfranchised the rural labourers.

Redistribution of Seats Act, 1885. This added two million

voters to the electoral list and, therefore, necessitated rearrangement of constituencies, which was accomplished by passing the *Redistribution of Seats Act*, 1885. According to this Act, the old system of two-member constituencies was replaced by that of single-member constituencies; but twenty-two towns and the Universities of Oxford and Cambridge were allowed to return two members apiece. All the other multi-member constituencies were sub-divided into single-member ones. It will thus be seen that although the Chartist Movement of 1836 had been suppressed, most of their demands, *viz.*, universal manhood suffrage, equal electoral districts, vote by ballot, and removal of property qualifications for members of Parliament were met by 1885.

Reforms in Local Government: Acts of 1835, 1888 and 1894. In the domain of local self-government also, the nineteenth century witnessed the introduction of certain reforms. Till the beginning of the nineteenth century, local government was mainly in the hands of the aristocracy; the county gentlemen appointed by the crown on the advice of the lord lieutenant sat as justices of the peace and administered affairs of the county. In 1835, the *Municipal Corporations Act* was passed, which swept away the municipal oligarchies and vested all power in the mayor, alderman and councillors. In 1888, the *Local Government Act* was passed which abolished the old system of local government in the counties and established in its place county councils elected by the people. The chief object of this Act was to give to the counties, as far as possible, 'that form of municipal government which had previously pertained only to English boroughs..... Every county council was made a corporation.' The *Local Government Act* of 1894 sub-divided every administrative county into urban and rural districts each with its own elected council. The system of local government thus introduced in England still continues with slight modifications made by subsequent Acts.

The Twentieth Century Reforms. The constitutional development of the twentieth century necessitated by the conflict between the Commons and the Lords in 1910 and the rising wave of democratisation in England as a result of the great war (1914-18), is reserved, for a fuller treatment, in subsequent chapters dealing with legislature and local government.

Reforms of the Judicial System. It has been observed, in an earlier chapter, how the judicial system developed in England ever since the time of Henry I. There was, however, no settled plan in this, with the result that different courts were set up to deal with the

different classes of cases. In 1873, Parliament passed the classes of *Supreme Court of Judicature Act* which reorganised the judical system with a Supreme Court of Judicature at the Apex; the Courts of Queen's Bench, Common Pleas, Exchequer; the courts of Chancery, Admiralty and Probate and Divorce, which had till then exercised independent powers were all made divisions of the High Court of Justice, and a new Court of Appeal was established. Equity and law were thenceforth to be administered by the same courts.

Select Readings

Practically every book on the history of England describes the slow development of the law of the English constitution, dealing with the king, cabinet, legislature, local government and judiciary. The following books are, however, suggested for further study.

Adams, G. B.—*Constitutional History of England* (1934 edition).

Bagehot, W.—*Evolution of Parliament.*

Cross, A. L.—*Outline of English Constitutional History.*

Cross, A. L.—*Shorter History of England and Greater Britain.*

Dicey A. V.—*The Law of the Constitution* (1939 edition).

Maitland, F. W.—*Constitutional History of England.*

Montague, F. C.—*Elements of English Constitutional History* (1936).

Pollard, A. F.—*The Evolution of Parliament* (1926).

Puntambekar, S. V.—*English Constitutional History* (2 vols. 1935).

Smith, G. B.—*History of the English Parliament* (2 vols. 1892).

Taswell-Langmead, T. P.—*English Constitutional History* (9th edition).

Taylor, H.—*Origin and Growth of the English Constitution* (2 vols, 1898).

Usher, R. G.—*Institutional History of the House of Commons*, 1547-1641 (1924).

White, A. B.—*The Making of the English Constitution* (1925).

5

SALIENT FEATURES OF THE ENGLISH CONSTITUTION

Constitutional principles and forms do not operate in a vacuum of abstract reasons. They are a method intended to secure the triumph of certain ends: they are shaped to the purposes of those ends. The English State of the last two hundred and fifty years is the institutional expression of that Liberalism which received its first classical expression in Locke.

—H. J. LASKI

* * *

The essence of our Constitution is law, respected and enforced; and the development of our native law and Law Courts, and of the High Court of Parliament, is the great accomplishment of the medieval English Kings and their servants.

—G. M. TREVELYAN

1. Evolutionary Growth is the most salient feature of the British Constitution. The brief history of the British constitution as described in the previous chapter, brings out the most salient feature of this constitution, *viz.*, that it is the result of a long and imperceptible evolutionary process. At no period of their history have Englishmen been disposed to revolutionise their political system and institutions. The brief period of the Commonwealth (1649-1660) as a result of the Civil War, is an exception which proves the rule. The many phases of this long evolutionary growth extending over many centuries have left their own respective characteristic impression on the institutional development. Consequently, the British Constitution presents a picture entirely different from a well laid down clear-cut fore-square building with a single architectural design. It looks like an old family mansion to which each successive generation has added its own turret or side-wing without any effort to maintain the symmetry of the main structure. No wonder, then, that in no single place can the constitution be discovered to satisfy the desire of a student of political science to learn it.

Almost every other modern state has a single document which contains all the main principles of its constitution. The U. S. A. constitution is a single piece or document, *viz.*, the draft prepared by the Philadelphia Convention in 1787 and finally accepted by the states, with only such amendments as have been subsequently added to it.

British Constitution is not a Single Document. The constitution of 1946 gives us a fairly accurate idea of the French system of government. But unlike this, the British constitution cannot be found in a single document or parliamentary statute. It is, on the other hand, a curious admixture of several principles enunciated in stray statutes of Parliament beginning with the Magna Carta of 1215 and down to the Abdication Act of 1936. To enumerate these acts and statutes which roughly contain the broad principles of the constitution, we may mention the following :

Magna Carta (1215), which restricted the power of the king by guaranteeing some of the rights of the barons and the clergy, requiring the convening of a National Council to vote taxation, and the setting up of a Council of 25 barons to see that the provisions of the Charter were carried into effect ;

Petition af Right (1628), which re-iterated the ancient rights guaranteed in the Magna Carta and subsequent statutes, put a stop to the king's arbitrary power to raise money without the consent of Parliament and to imprison persons without trial or the cause being shown ;

The Habeas Corpus Act (1679), which secured the personal liberty of the subject ; although the right of personal liberty in England had been recognised much earlier the ancient remedies were inadequate and this Act removed the defects and secured to citizens an important right which in most other countries is declared in the constitution itself;

The Bill of Rights (1689), which was the result of the 'Glorious Revolution' which according to Macaulay "finally decided the great question whether the popular element which had, ever since the age of Fitzwalter and De Montfort, been found in the English polity, should be destroyed by the monarchical element, or should be suffered to develop itself freely, and to become 'dominant'. And he went on to say that the Bill of Rights 'though it made nothing law which had not been law before, contained the germ..of every good law which has been passed during more than a century and a half, of every good law which may hereafter, in the course of ages, be found necessary to promote the public weal, and to satisfy the demands of public opinion';

The Act of Settlement (1701), which is 'a veritable original contract be-

tween the crown and the people' as it rupudiated the divine right of kings and recognised the right of Parliament to determine the succession to the throne;

The Act of Union (1707), which united England and Scotland to form the United Kingdom of Great Britain;

The Act of Union with Ireland, 1800, which formally united Ireland with Great Britain and consequently effected changes in the composition of Parliament;

The Reform Acts of 1832, 1867, 1884 and 1885, which enlarged the basis of franchise and thus made the House of Commons a really popular chamber;

Representation of the People Acts of 1918 and 1928, which established adult franchise for the House of Commons;

Local Government Acts of 1888, 1894 and *1929*, which established and developed local self-government by re-organising the older institutions that had come into existence almost haphazardly, and introduced a definite scheme of local government in the country;

The Judicature Acts of 1873, 1875, 1876 and 1894, which have evolved order out of chaos by re-organising the judicial system;

The Parliament Act, 1911, which has curtailed the powers of the House of Lords and made the Commons the really supreme legislative body.

The above List is not exhaustive. These are but the main Acts and Statutes which contain the main principles of the English constitution. They give the reader the broad features of the picture, but a student of constitutions would have to hunt up parliamentary records and a very large number of smaller Acts to get a fuller view of the English constitution. 'This vagueness or reticence,' of the constitution, as Marriot remarks, 'is at once the despair and the admiration of foreign publicists. At every turn they are baffled by the lack of authoritative texts. But they can find enough to perceive and to emphasize the political advantages of the English method.' In building up their constitution, the English have not departed from their traditional character of not making revolutions to cut away entirely from the older institutions and practices. They have merely introduced, at every subsequent stage, just minor changes to suit the new conditions. This feature has been very nicely described by M. Boutmy in these words:

> The English have left the different parts of their constitution just where the wave of History had deposited them, they have not attempted to bring them together, to classify

> or complete them, or to make a consistent and coherent whole. This scattered constitution gives no hold to sifters of texts and seekers after difficulties. It need not fear critics anxious to point out an omission, or theorists ready to denounce an antimony. . By this means only can you preserve the happy incoherences, the useful incongruities, the protecting contradictions which have such good reason for existing in institutions, *viz.*, that they exist in the nature of things, and which, while they allow free play to all social forces, never allow anyone of these forces room to work out of its allotted line, or to shake the foundations and walls of the whole fabric. This is the result which the English flatter themselves they have arrived at by the extraordinary dispersion of their constitutional texts, and they have always taken good care not to compromise the result in any way by attempting to form a code.[1]

2. Largely Unwritten Constitution. It is really this vagueness or reticence which coupled with the widely scattered fragments of the constitution gives the latter its largely unwritten character. This attribute of the English constitution, *viz.*, its unwritten nature, has to be understood in the sense that there is no single statute, act or document which contains it; moreover, even all the acts and statutes together do not contain the whole constitution for it is also, to a great extent, contained in *conventions and customs* and *usages* of England.

3. It is also based on Conventions. What do the conventions of the English constitution signify? An answer to this question may be attempted thus: There exists in England a great difference between the *formal law* and the *normal practice* of the constitution. The actual system of government deviates considerably from the literal sense of those laws and statutes which are said to contain the general principles on which the constitutional edifice has been constructed. It is the conventions which are responsible for this deviation from the words of the statutes, *i.e.*, from the 'constitutional law' as contained in parliamentary enactments. What is exactly meant by "conventions of the constitution"? Conventions are rules but not laws, which form part of the constitution of a country. Dicey defines conventions as 'maxims or practices which, though they regulate the ordinary conduct of the Crown, of Ministers, and of other persons under the constitution, are not in strictness laws at all.' And he cites such examples to illustrate his point. 'The King must assent to, or cannot "veto" any bill passed by the two

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[1] Quoted by Marriot, *English Political Institutions*, pp. 28-29.

houses of Parliament;' 'Ministers resign office when they have ceased to command the 'confidence of the House of Commons'. The first of these indicates how the formally recognised power of the king over legislation has been normally curtailed so as to establish the virtual legislative supremacy of Parliament, while the latter demonstrably establishes that though in strict law the ministers are appointed by the King according to his choice, they are really responsible to the House of Commons and not to the King, which in practice comes to mean that the King's choice of ministers must be limited to those who command the confidence of the Commons.

Conventions of the constitution consist of 'customs, practices, maxims or precepts which are not enforced or recognised by the courts, make up a body not of laws, but of constitutional or political ethics'. They are understandings grown up in course of time by principles applied to the actual government by powerful statesmen and Prime Ministers who had to conduct the affairs of government in order to meet actual situations; they are constantly growing. This is a fact which can be easily understood by reference to *May's Parliamentary Practice*, an authoritative book on the working of the parliamentary system of England. Comparing the first edition of the book with the last, one would find that a large body of usages and customs, practices and understandings according to which the government of England has been carried on, during the several centuries, particularly during the nineteenth and twentieth centuries, has been added.

Freeman describes the salient characteristics of the conventions or understandings of the constitution in these words:—

'We now have a whole system of political morality, a whole code of precepts for the guidance of public men, which will not be found in any page of either the statute or the common law, but which are in practice held hardly less sacred than any principle embodied in the Great Charter or the Petition of Right. In short, by the side of our written Law, there has grown up an unwritten conventional constitution. When an Englishman speaks of the conduct of a public man being constitutional or unconstitutional, he means something wholly different from what he means by conduct being legal or illegal. A famous vote of the House of Commons, passed on the motion of a great statesman, once declared that the then Ministers of the Crown did not possess the confidence of the House of Commons, and that their continuance in office was therefore at variance with the spirit of the constitution. The truth of such a position, according to the traditional principles on

which public men have acted for some generations, cannot be disputed; but it would be in vain to seek for any trace of such doctrines in any page of our written Law. The proposer of that motion did not mean to charge the existing Ministry with any illegal act, with any act which could be made the subject either of a prosecution in a lower court or of impeachment in the High Court of Parliament itself. He did not mean that they, Ministers of the Crown, appointed during the pleasure of the Crown, committed any breach of the Law of which the Law could take cognizance, by retaining possession of their offices till such time as the Crown should think good to dismiss them from those offices. What he meant was that the general course of their policy was one which to a majority of the House of Commons did not seem to be wise or beneficial to the nation, and that therefore, according to a conventional code as well understood and as effectual as the written Law itself, they were bound to resign offices of which the House of Commons no longer held them to be worthy".[1]

Such then is the nature and characteristic of any convention or constitutional understanding. Most of the practical part of the administration in England is conducted according to conventions. Freeman and Dicey both cite several important conventions which have become the unwritten part of the English constitution. The following examples illustrate the point:—

(1) "A Ministry which is outvoted in the House of Commons is in many cases bound to retire from office". True the Cabinet or the Ministry is theoretically in office during the pleasure of the Crown. But as the Crown has risen above party politics and become only the symbol of the unity of the nation, it is really Parliament (and in Parliament the House of Commons) to which the Ministry is responsible. Hence no Ministry can, on losing the confidence of the House of Commons retain the right to govern. In this connection there is another correlated convention, namely, "A Cabinet, when outvoted on any vital question, may appeal once to the country by means of a dissolution". That is, when the Ministry is defeated in the Commons on any important issue and it feels that its policy and not the view of the House of Commons will be endorsed by the country, it may appeal to the King to dissolve the House and order fresh elections. By convention (not by law) the King would accept the request of the Cabinet and dissolve the House. If after fresh elections the Cabinet is again outvoted, the

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[1] Keith, A. B.: *The Constitution, Administration and Laws of the Empire*, p. 5,

Cabinet would resign. No Cabinet thus defeated can ask for a second dissolution. All this has come to be established as almost an integral part of the unwritten constitution.

(2) "The Cabinet are responsible to Parliament as a body, for the general conduct of affairs." This has come to be known (again by convention) as the collective responsibility of the Cabinet to Parliament, in practice, to the House of Commons. In theory, the Cabinet members are appointed by the King, and each Minister is responsible for the conduct of affairs of his department. But by convention the Cabinet works as a single entity. When a particular minister's policy is disapproved by the House the whole Cabinet resigns. This ensures solidarity of the Cabinet and the continuance of the principle of collective responsibility of the executive to the legislature.

(3) "The party who for the time being command a majority in the House of Commons, have (in general) a right to have their leaders placed in office". And, therefore, "The most influential of these leaders ought (generally speaking) to be the Premier, or head of the Cabinet". In theory the Cabinet is the King's government and the King is free to ask any member of the House of Commons to form a government. But as the Cabinet when formed must command the confidence of the House of Commons, the King summons only the leader of the majority party to form the government. This leader, on accepting the invitation of the King, is designated as Premier and he recommends the names of those whom he considers fit to be appointed as the King's Ministers. In case no party has a clear majority in the House, the King exercises his discretion in calling upon such leader of one of the parties who, in his opinion, is likely to muster the support of the majority of the House to conduct the government. Again, by convention, the King must accept the list of persons recommended by the Premier for appointment as His Majesty's Ministers. The King may, on occasions, discuss the advisability or otherwise of a particular person for appointment as His Majesty's Minister, but it is the Prime Minister's view which ultimately prevails with the King in the appointment of the Ministry.

(4) "Treaties can be made without the necessity for any Act of Parliament; but the Crown, or in reality the Ministry representing the Crown, ought not to make any treaty which will not command the approbation of Parliament". The Cabinet, for all practical purposes, represents the Crown in the actual conduct of the administration. It is, in theory the Crown, but in practice the Cabinet, which deals with foreign countries and as treaties with foreign countries bind the whole

government of England, the Cabinet has to bear in mind, while negotiating or entering into a treaty that it is ultimately Parliament whose wish ought to prevail, hence it ought not to make any treaty which is not likely to receive the approval of Parliament.

(5) "The foreign policy of the country, the proclamation of war, and the making of peace ought to be left in the hands of the Crown, or in truth of the Crown's servants. But in foreign as in domestic affairs, the wish of the two Houses of Parliament or (when they differ) of the House of Commons ought to be followed". This means that while the Cabinet, as the executive part of the English government, conducts foreign affairs, it has to bear in mind its responsibility to the House of Commons. The best example, in this connection, of the ultimate Cabinet responsibility to the House of Commons (representing the will of the nation or as the mirror of public opinion) is afforded by the resignation of Premier Anthony Eden who had to resign his office (though outwardly on grounds of health) when the unwise Anglo-French Suez adventure in October, 1956, was vehemently criticised in the House of Commons and in the British Press. A Cabinet crisis was just averted by the retirement of Eden from Prime Ministership. Hence "The action of any Ministry would be highly unconstitutional if it should involve the proclamation of war, or the making of peace, in defiance of the wishes of the House."

(6) "If there is a difference of opinion between the House of Lords and the House of Commons, the House of Lords ought, at some point not definitely fixed, to give way, and should the Peers not yield and the House of Commons continue to enjoy the confidence of the country, it becomes the duty of the Crown, or of its responsible advisers, to create or threaten to create enough new peers to override the opposition of the House of Lords, and thus restore harmony between the two branches of the legislature". Though in theory Parliamentary sovereignty ought to mean the sovereignty of both Houses, it has come to mean in the present century the sovereignty of the House of Commons which is the representative of the will of the electorate, that is, of the country. When the House of Lords persisted in its opposition to the Finance Bill in 1909, Prime Minister Asquith succeeded in curtailing the powers of the House of Lords through Parliament Act of 1911. It was on that occasion that the Lords yielded when the threat to create more peers was given.

(7) "Parliament ought to be summoned for the despatch of business at least once in every year". Parliament grants money to the King's

government every year by passing the budget and it also authorises every year the maintaining of the army. This means the necessity (the imperative need) of convening of Parliament every year so that the King's government may get the necessary Parliamentary sanction for meeting the expenditure of the government and the maintaining of the large number of civil servants and the Army. As the budget is passed each year, so is the Army Act renewed every year.

(8) When a legislative measure has passed through both the Houses of Parliament and then presented to the King for signature, the latter must sign the measure. This has become an important convention of the English constitution. In theory the King can refuse to sign a measure and without his signature parliamentary legislation has no force of law. In practice, however, no King dare refuse to sign a measure already agreed to by both Houses. No Prime Minister would like to continue in office if legislative enactment by Parliament does not receive the King's assent. This denial on the part of the King to exercise veto over legislation has become a convention.

(9) 'The Speaker of the House of Commons is a no-party man', is another important convention of the British constitution. No doubt at the time of a general election the person, who is to be elected Speaker, is a party candidate, but soon after his election he gives up his party affiliation and acts as an independent presiding officer of the Commons. He is thus able to command respect of all sections in the House and can conduct the proceedings impartially. By convention, political parties do not set up candidates, at subsequent elections, against the Speaker who seeks re-election to the Commons.

(10) Another important convention has grown according to which the party in power in the House of Commons will not bring forward any new controversial measure before the House if in its election manifesto it had not included the aim for which such a measure is needed. This ensures respect for the will of the electorate. In particular, the House of Lords, even if it contains a majority hostile to the majority party in the Commons, will abstain from opposing a measure whose policy had been voted upon by the electorate.

Most of the conventions discussed above relate to the powers legally vested in the Crown but which are in practice exercised either by Parliament or by the Cabinet. The question arises : why are conventions obeyed even though they are not laws? Conventions are not laws, because there is no statutory sanction behind them; their breach cannot be taken notice of by courts; nor can they be enforced by the

courts as laws are enforced. Yet they are obeyed because they are the understandings according to which the administration is conducted. They have become a part of the habit of the Englishman. Their violations will not only create confusion in administration, but will also meet with popular unrest and protest. Conventions supply the real flesh and blood to the skeleton of the written laws or written part of the constitution. They have grown out of the necessity of changing conditions in the country and they have been, for the first time, introduced by towering statesmen who had to find solutions to the crises created or difficulties faced. Obedience to the conventions, therefore, facilitates administration.

Conventions have, therefore, come to occupy a very important place in the English constitution. The main difference between legal rules and conventions is that while the former are often written, the latter are generally unwritten. In England the conventions 'cover the most important of the constitutional relations and utterly transform the practical meaning of legal enactments'.[1]

Extreme Flexibility of the Constitution. As a result of its partially unwritten character and the part which conventions play in its practical working, the English constitution is extremely flexible. As a general rule, all unitary constitutions are flexible, *i. e.*, susceptible to frequent and easy changes made by the ordinary process of law-making, but the English constitution, essentially of the unitary type, is the most flexible of the existing modern constitutions. Its flexibility consists not merely in the ease with which it can be changed by the ordinary legislative procedure but also in its adaptability to changing circumstances. Legislative supremacy of Parliament is so well established that Parliament can make any law, whether concerning a turn-pike or a change in the powers of the House of Commons or the grant of self-government to a British dependency, by the same process of legislation. That is, no special procedure is needed to make a constitutional law. Hence, the constitution is easily adaptable to all changes that occur. The best example is the *Abdication Act of 1936* passed within half an hour of its introduction into Parliament, which legalised the abdication of Edward VIII and seated another King on the throne. In another country, such a change would have needed a great revolution, but in England the flexible constitution made it almost without a ripple on the political sea.

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[1] Keith, A. B.: *The Constitution, Administration and Laws of the Empire*, p. 5.

5. The Constitution has set up a Parliamentary Democracy. The presence of a King at the apex of the governmental system and the great pomp and glory always sought to be attached to him might give to a superficial observer the impression that the English constitution is of the monarchic type. In practice, however, the constitution has set up a democratic government of the parliamentary type. This has variously been described. Some call it a limited monarchy, while others describe it as a monarchic democracy. The King is, no doubt, there as the wielder, in theory only, of all legislative, executive, and judicial power. Strong conventions and some of the statutes have, however, reduced him to the position of a constitutional head of the state. Thus with the sovereignty of Parliament has grown the parliamentary executive, *viz.*, a cabinet which though appointed by the King, is actually responsible to the Commons. This has been the result of centuries of constitutional struggle of a slow and generally imperceptible nature.

6. Party System is a feature of the English Constitution. As the credit of first evolving a parliamentary type of government goes to England, so does that of the accompanying and essential condition of its success, *viz.*, the party system. It has already been observed, in a previous chapter, how political parties began and grew up in England. Every intelligent and shrewd student of English constitutional history will perceive that without the formation of political parties in the legislature, parliamentary or cabinet government is an impossibility. The English constitution is thus based upon a highly developed party system. The great political battle that is fought at the time of general election in England does not stop, as it does in the U. S. A., when the elections are over. It is carried into Houses of Parliament where, on practically every question, His Majesty's Government and His Majesty's Opposition cross intellectual swords and try to establish their respective cases. The very essence of the parliamentary control over the executive is this division of the legislators into well-formed and disciplined parties.

Three parties at present. To achieve success in the working of a parliamentary executive two, and only two, political parties are necessary. For a long time, the Liberals and the Conservatives continued to be the only two political parties in England. Later, however, other parties were formed on account of minor differences on social as well as political questions. The Radicals, the Home Rulers, the Unionists, and the Labourites and Communists are the examples. But

at the present time there are three political partics which are well-organised, have an appreciable strength in Parliament and following in the country, and possess definite political programmes. These are the Conservatives, the Liberals and the Labour Party. We may discuss here the principles for which these parties stand, and by which they are distinguished in their working.

The Conservatives. The Conservative party in England is, by far, the first and most numerous party at the present time. 'The essence of Conservatism is to be discovered in the social institutions of which it approves and its attitude to the idea of progress. The social institutions favoured by the Conservatives are the Crown and national unity, church, a powerful governing class, and the freedom of private property from state interference'.[1] The Conservatives look upon the Crown as the chief symbol of unity in the Nation and the Empire, on a par with Parliament, if not actually greater than it. They are attached to it with almost mystic devotion. They have also an intense sense of Nationality, and look upon a foreign country or sect as untrustworthy. The party 'has faith in the superiority of the race to all other races, even its allies in war: and belief in the superiority of its own political institutions and traditions and the mission of the race to carry out the civilisation of other peoples, even against their will, and even with violence to the point of diabolic brutality. This feeling of nationality reveals itself in glorification of all that makes for the defence or aggrandizement of the country ; a grandness considered rather in a material and warlike light than founded upon artistic achievement. . . . Empire is its very breath ; for it betokens the potency of the race to extend its force and rule, and success gives the presumption of high spiritual value'.[2] Necessarily, therefore, the Conservatives stand for a strong and ever-increasing imperialism in foreign policy and are opposed to the liberation of subject peoples in the British Empire.

The Conservatives and the Church. The attitude of the Conservatives to the established Church of England has consistently been one of extreme loyalty to it, for ever since its establishment it has been a conservative institution. 'No Bishop, no King' had been the cry of the Tories (the predecessors of the Conservatives) and they had fought political battles in the XVII century to maintain its position high in

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[1] Finer : *Theory and Practice of Modern Government*, p. 516.

[2] Ibid p. 517.

the estate.

Conservatives and society. In social questions, the Conservatives have always favoured the existence of a governing class; for 'they believe that there are people who have the skill and the right to govern independently of the popular will'. And for this reason, they have consistently opposed extension of franchise and the grant of larger powers to the House of Commons where the masses, through their representatives rule at the cost of the classes. The Conservatives have always been predominant in the House of Lords, as they hold the larger part of the lands and riches of England. Hence, they oppose state interference with private property. It is this possession of large property that has enabled the Conservatives to influence the policy of the state by being closely associated to the royal family.

The Conservatives, through the capitalists and industrialists, control the press in England. All important papers are run by them; thus they largely influence public opinion, particulary on all questions of foreign policy and Imperial relationships.

The Liberals as a party. The Liberals form the other party and, though not now the second to the Conservatives in strength and following, they are as old as the latter. 'The essence of Liberalism is 'openness to new experience and the vindication of free growth.' Liberalism in England was a product of the Reformation Movement when the right to free individual opinion was particularly advanced. Therefore, it attacked the establishment of a state church and despotic rule. And that is why the Whigs (the old name of the Liberals) rose into open conflict with the Stuart despots and brought about the Glorious Revolution, curbed the authority of the King and increased that of Parliament. The constitutional reforms of the XIX century were all introduced by the Liberal governments in England, for the Liberals have as a party taken a deep interest in the machinery of government, thinking that therein are the potentialities of freedom as well as despotism. To the Liberal mind 'The individual is prior in importance to the state. Only in the individual appear the principles of growth, of initiative, of creation, and the possibility of really assenting to its validity in other people. The ultimate goal of existence is to produce the greatest number of perfect individuals. The pattern is not to be dictated by those with coercive power, but freely accepted by discussion, reasoning and judgment ; for no one can say for certain whose truth is more valid, more beautiful, more vitalizing, and the only hope, therefore, of discovery, lies in an equal opportunity for all to

utter and evolve, with organised restriction, which prevents the destruction of this opportunity, reduced to a minimum'.[1] The Liberals, while admitting the claim of nationality and race, believe in granting self-government to the different communities within the Empire, though by slow stages. They have also carried out this generous policy in actual practice by granting self-government to Canada, the Commonwealth of Australia and the Union of South Africa. In domestic matters, they stand for greater opportunities to the masses by encouraging industry and commerce, widening the powers of municipalities, and fighting out unemployment.

The Liberals are marked by their sympathy for the middle and working classes. They form the intellectual class in England just as the Conservatives form the propertied class, and are mostly drawn from the middle classes. In the Lords their number is appreciable, but in the Commons their strength is progressively dwindling on account of the growing influence of the Labour Party. As a political concept, Liberalism is a middle way between Conservatism and Socialism.

The Labour Party in England. The third political party which has, during the post-war period, become the most serious rival to the Conservatives, and at the cost of Liberals, is the Labour Party. In general, however, it is a challenge to the two old parties. It is based upon the principles of socialism and is, thus, a reaction to the privileged position of property and capitalism in politics. It is, therefore, drawn almost entirely from the poorer and working classes. No doubt, there had been in existence in England, at different periods of history, some movement for the amelioration of the poverty-stricken majority, particularly from the beginning of the nineteenth century when the Chartist Movement was started. But it has received great impetus only during the post-war period, *i.e.*, after 1918. The Labour Party stands for state control of major economic projects, raising the standard of living of the workers, higher taxing of the rich, international peace and grant of full self-government to the various dependencies of the Empire. Thus, both in domestic and foreign policy the Labourites are an antithesis of the Conservatives. Their number in the Lords is negligible, but in the Commons they are a growing party. At least on four occasions they have been able to form the government during the last three decades, twice with the tacit support of the Liberals.

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[1] Ibid p. 523.

Place of political parties in England. The party system in England is, undoubtedly, the back-bone of representative government. Each party tries to get its own leaders into office and for that purpose it educates the public. 'It gives parties, dances, receptions. It holds meetings and organises educational classes. It employs agents, speakers, canvassers. It raises funds for its activities. It seeks to permeate the local and the national press with its Propaganda'.[1] It has a national organisation which works all round the year with control over the local branches. The party system, in this way, largely controls the administrative system and, therefore, has become an essential feature of the constitution.

7. Rule of Law is a feature of the constitution. Another very important feature of the English constitution is the Rule of Law. It is based upon the common law and is the product of centuries of struggle for the recognition of the rights of the subjects *vis-a-vis* the monarchy. In England, the rights of citizens are not included in any single written enactment or statute, and some of these rights do not find mention in any Act at all, yet all the citizens enjoy the same liberty in all personal, religious and other matters as is generally enjoyed by the Americans and the French in their own countries. And the most important guarantee of civil liberty is this *Rule of Law* which is peculiarly of British origin and distinguishes the British from the continental system.

Broadly stated, the *Rule of Law*, as Dicey puts it, constitutes the following three fundamental principles:

Firstly, 'that no man is punishable or can be lawfully made to suffer in body or in goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land'.[2]

This means that the 'Rule of Law' ensures that the government is free from arbitrariness of the persons in authority who cannot trample upon the liberty of the subject in any manner.

Secondly, it ensures that no man, whatever his rank or authority, is above the law, but every citizen 'is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals'.[3]

This is a very peculiar feature of the British administrative system, and is in strange contrast with the continental system according to

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[1] Laski: *Parliamentary Government in England*, p. 71.

[2] *Law of the Constitution*, pp. 183-84.

[3] Ibid. p. 189.

which officials are tried by administrative courts (special tribunals set up for the purpose) under the *Administrative Law*. Dicey thus speaks of the supremacy of the Rule of Law: 'With us every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen'.[1]

This equality of all before the law is so complete that only the King is considered to 'do no wrong,' and even in this case there is this guarantee that any action of the King, to be binding on the subjects, must bear the signature of one of his ministers, thus throwing all responsibility on the latter who is amenable to the ordinary law of the land. In fact, there are several cases contained in the Law Reports showing how officials have been punished in the ordinary way 'for acts done in their official capacity'. Hence the exception is more theoretical than real.

Thirdly, the Rule of Law indicates that with the Englishmen, 'The general principles of the Constitution are....the result of judicial decisions determining the rights of private persons in particular cases brought before the Courts.'[2]

We thus see that in England, the Rule of Law denies a privileged position to any person official or unofficial. "*The persons who compose the government of the day cannot do just as they please, but must exercise their powers strictly in accordance with the rules which Parliament has laid down.*"[3] If any officer exceeds the bounds of his authority, he can be brought to trial before the ordinary courts, tried under the ordinary law and punished, if found guilty, in the same manner as any other private citizen. This is in contrast with the system in the Continental countries where according to Administrative Law, officials guilty of crimes committed in their official capacity are tried by Administrative Tribunals.

In England, therefore, executive authority is undoubtedly limited by the Rule of Law. Recently, however, there has been noted a definite decline in reverence for 'rule of law', and as Dicey himself admits, there is, at present, "a marked tendency towards the use of lawless methods for the attainment of social or political end".[4] We may, at first, note that even when an official is tried and punished by the ordinary law courts, he himself does not pay damages, if any have to

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[1] Ibid.
[2] Quoted by Finer in *Theory and Practice of Modern Government*. p. 1471.
[3] Hegan and Powel : *Government of Great Britain*, p. 9.
[4] Dicey : *Law of the Constitution*. Introduction, XXXVIII.

be paid to the private citizen harmed, but it is the State that pays, the State of whom the official was only an agent. This lessens, to a great extent, the chances of an official keeping himself strictly bound by ordinary laws. Secondly, Parliament has recently been conferring very wide judicial powers upon the officials, *e.g.*, the Education Act of 1902 confers such powers upon the Educational Commissioners; the Finance Act (1910) and The National Insurance Acts (1911 and 1912) on several other officials. The Parliament Act of 1911 widens the powers of the Speaker whose 'certificate' under the Act becomes conclusive for all purposes and cannot, therefore, be questioned before a court of law. And when it is remembered that a judge, while administering justice, would rather let off ten criminals than punish one innocent person, the conferment of wide discretionary powers on government officials, as illustrated above, very much limits the powers of the judge and, in this way, minimises the significance of the Rule of Law. The officials are acquiring further powers, in the form of rules and orders, commonly called subordinate, delegated, departmental legislation. "Thus England suffers from a system which at any moment may result in serious injustice to the individual, the public, the official. There is no uniformity of principles, for the Rule of Law has been superseded by a number of sporadic and unregulated growths".[1]

These are the salient features of the English constitution which is ever growing in the light of changes that occur from day to day, both in national life and international relations. And a student of this constitution has to sift a vast volume of literature before correctly grasping its niceties.

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6

PARLIAMENT : ITS GROWTH AND SOVEREIGNTY

> In England, the Parliament has an acknowledged right to modify the constitution : as, therefore, the constitution may undergo perpetual changes, it does not in reality exist, the Parliament is at once a legislative and a constituent assembly.
>
> —DE TOCQUEILLE

* * *

> It (Parliament) hath sovereign and uncontrollable authority in the making, confirming, enlarging, restraining, abrogating, repealing, reviving, and expounding of laws, concerning matters of all possible denominations, ecclesiastical or temporal, civil, military, maritime or criminal ; this being the place where that absolute despotic power, which must in all governments reside somewhere, is entrusted by the constitution of these Kingdoms.
>
> —BLACKSTONE'S COMMENTARIES

What the term Parliament connotes. Parliament is the legislative body in England. It exercises sovereign legislative power for the whole of the British Empire, in theory even for some of the self-governing dominions. Legally the term Parliament includes the King, the House of Commons and the House of Lords, as is clear from the words that occur in a parliamentary statute, indicating the authority that makes the law. These words are : "Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows. . . ."

While the position and the theoretical powers of the King in legislation remain intact, the real legislative power is exercised by the House of Commons and the House of Lords, even though the Lords have lost much of their influence in law-making since the Parliament Act, 1911. In this chapter, we propose to describe the origin, growth and nature of sovereignty which Parliament exercises.

Origin and growth of the British Parliament

The British Parliament is the oldest legislative body in the world. Other countries borrowed their parliamentary institutions from England and that is why British Parliament is called the 'Mother of Parliaments'.

Under the Normans and Plantagenets. Mention has already been made of the evolutionary character of the British constitution, that is, of each organ of the government. In the earlier times the Witenagemot (meeting of the wise men) used to advise the king. After the Norman conquest and the consequent introduction of the feudal system, the Witenagemot was replaced by a new body, the court of the king's feudal vassals who were immediate tenants of the crown, bound to the latter by ties of military service. The practice of summoning the bishops and principal abbots to the meeting of the council at the court was also continued by the Norman kings. At every meeting of the new body the tenants-in-chief and the ecclesiastics took particular care to safeguard their own rights, while granting extraordinary aids to the king. When, later, the king infiringed upon the rights of the members, he was forced to grant the Magna Carta (1215) by which he promised, on such occasions, to summon all the tenants *in capite*, the archbishops, bishops, abbots, earls and major barons individually, and the rest through the sheriff. When the number of tenants-in-chief increased on account of sub-divisions of their holdings, their poverty increased and influence declined.

The persistent efforts of King John's successors to disregard the advice of the National Council led to a feeling of animosity against the king in all classes of his subjects, more particularly when Henry III repeatedly disregarded the Charter, sought the advice of his foreign favourites and made foolish and expensive effort to secure for his son the crown of Sicily. Ultimately the Great Council or parliament which met at London on April 2, 1258, and lasted till May 5, forced the king to consent to the appointment of a committee of twenty-four persons (12 to be elected by the barons and 12 chosen by the king) to which unlimited power was granted to carry out necessary reforms. This committee met at Oxford on June 11, and drew up the famous Provisions of Oxford, according to which all governmental powers were placed in the hands of a representative oligarchy—the beginning of the decline of powers of the monarchy and the consequent transfer of power first to the oligarchy and later to the

representatives of the people.

Three years later (1261) the king came into direct conflict with the barons and was defeated at the battle of Lewis on May 14, 1264. At this Simon de Montford obtained supreme power. Simon placed friendly garrisons in royal castles and called the barons, and all the ecclesiastics (mentioned earlier) to meet in a national council at London; he also took the bold step (introducing a great innovation) to issue writs to all the sheriffs directing them to return not only two knights from each shire, but also two citizens from each city and two burgesses from each borough, to attend the meeting of the Council. This representation of the urban and rural areas in the Parliament. which met on January 20, 1265, earned for Simon the title of "founder of the House of Commons". Thereafter parliaments so composed continued to be summoned during the reign of Henry III. After his death, the national assembly was called to meet at Westminster on January 14, 1273, to swear allegiance to Edward I, then in Palestine. To this assembly were summoned not only the prelates and barons (as heretofore), but also four knights from each county, and four citizens from each city. When Edward summoned his first general parliament at Westminster in April 1275, it passed Statute of Westminster I as made "by his council and by the assent of the archbishops, bishops, abbots, priors, earls, barons, and the commonalty of the land thither summoned". This clearly established the right of the ecclesiastics and the commoners to pass laws in parliament.

In 1295, Edward I was embroiled in an expedition to France the forces of which overran Gascony and even landed at Dover. Anxious to have the backing of the whole nation, Edward I summoned a parliament to meet at Westminster in November, so constituted as to represent, and have the power to tax, the whole nation. Along with the archbishops and bishops, the representatives of the inferior clergy were also invited. Writs were issued to the sheriffs to arrange election and return of two knights from each county, two citizens from each city, and two burgesses from each borough. Thus three estates were created to compose the then parliament, namely, the barons, the clergy and the commoners. Probably each estate met separately, but the knights often joined with the commoners for presenting petitions to the king.

During the reign of Edward II the barons resisted the king due to the misdeeds of the king's favourites. The king was forced by Articles of Reform passed in 1311, which, among other things, stipulated

that (1) The king should not leave the kingdom, or levy war, without the consent of the baronage in Parliament and in case of his absence with consent of Parliament a guardian of the realm must be appointed by the common consent of the baronage in Parliament; (2) That the chancellor, two chief justices, treasurer, and other great officers of the crown, should be chosen by the counsel and assent of the barons in Parliament; and (3) that to prevent delay in the administration of justice, parliaments should be holden once in every year, or twice if need be, and in convenient places. These articles asserted the right of the barons in matters of administration and the convening of parliaments regularly.

In 1309, the commons had asserted their power and rights by granting a subsidy "upon this condition that the king should take advice and grant redress upon certain Articles, in which their grievances were set forth". Thirteen years later an Act was passed which repealed the Ordinances passed in 1311, and recognised the right of the commons to share in legislation, by declaring that "the matters which are to be established for the estate of our lord the king and his heirs, and for the sake of the realm and of the people, shall be treated, accorded, and established in parliaments by our lord the king, and by the assent of prelates, earls, and barons, and the commonalty of the realm, according as it hath been heretofore accustomed".[1] This established the right of the common people of England, through their representatives both of towns and counties, to participate in and share in the making of laws for England. The power to make laws exercised by the king alone in former days now passed into the hands of Parliaments composed of the king, the prelates, the barons and representatives of the commonalty of the kingdom. In 1300 and again in 1302, it was declared by statute that parliament should be held annually.

During the reign of Edward III, the commons asserted three important claims: That all taxation without the consent of parliament is illegal; the necessity for the concurrence of both Houses in legislation; the right of the commons to inquire into and amend the abuses of administration.[2] In 1360 the commons for the first time exercised the right of impeachment.

During the minority period (1377-89) of King Richard II the com-

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[1] Statutes of the Realm, 15 Edward II, 189.

[2] By this time the three estates in Parliament began to sit in two Houses, the Barons in the House of Lords and the rest in the House of Commons.

mons assumed an aggressive attitude in regard to their rights and practically, for some time, "the whole executive government was transferred to the two Houses". Later during the same reign the two houses acted in unanimity in asserting their rights to control the ministers, and in 1399 Parliament deposed the King.

Under Lancastrians and Yorkists. During the reign of the Lancastrian and Yorkist Kings (1399-1485) each House acquired privileges in its collective capacity as well as of its individual members; of these three are important—(1) freedom of speech, (2) freedom from arrest and special protection against assault, and (3) the right of the commons to determine contested elections.

Under the Tudors. With the rise of Tudor despotism, parliamentary control declined; Henry VII summoned parliament only seven times during his reign of twenty-four years; during his last thirteen years parliament met only once. This was possible because his first parliament had granted him, for life, two taxes, tonnage and poundage, and he exacted large sums as fines which together with forced loans and benevolences gave the king enough money to carry on the administration without parliaments. His successor Henry VIII also tried to rule without parliaments, but whenever he summoned any, he took care to pack it with men who were either his paid servants or favourable to him. One of his parliaments became so subservient that it enacted that "the K ng's Proclamations should be as valid as Acts of Parliament."

The reign of Elizabeth was marked by religious activities; the majority of the members of the House of Commons consisted of puritans. On two matters conflicts arose between the Crown and Parliament—succession to the throne and further reformation in the church established during Henry VIII's reign.

Under the Stuarts. With the accession of James I to the throne, the real conflict between the crown and parliament started. James propounded the theory of divine right to rule; parliament asserted its own rights and privileges acquired from time to time. In 1628 Parliament passed the Petition of Right. In 1629 Charles I came to the throne; he resolved to rule without Parliament and thus overthrow the Parliamentary Constitution of England. He exacted money through arbitrary taxes. Final struggle between the King and Parliament resulted in the Civil War because Parliament refused supplies without first obtaining the redress of grievances. In 1641 Parliament passed the Triennial Act to prevent the incoveniences arising out of long intermission of Parliaments. It provided that Parliament must

be summoned at least once in three years. During the revolutionary period 1642-1660, no great change took place except Pride's purge which ousted those members of the Commons, who had sided with the King and a temporary abolition of the House of Lords. But with the accession of Charles II in 1660, parliament was restored to its earlier status of constitutional supremacy. With the Glorious Revolution (1689) parliament's right to sanction abdication of throne by a King, and the adoption of another King was successfully asserted.

During the succeeding two centuries parliament acquired its position as a supreme factor in the administrative machinery. The Glorious Revolution of 1689 had far-reaching constitutional results. William and Mary accepted the throne by agreeing to the Declaration of Rights on February 13, 1689, that asserted that (*a*) the sovereign had no right without the authority of parliament to suspend laws, to use the dispensing power, to levy money, to create commissions and courts for ecclesiastical cases and to raise or keep a standing army in time of peace, and (*b*) the subject had the right to petition the king, to have freedom of election to parliament which had to meet regularly, to have freedom of speech in parliament, to be free from excessive bail, excessive fines and illegal and cruel punishments. On December 16, 1689, parliament passed the Bill of Rights limiting the prerogative of the king and asserting the right of the subject. This measure excluded from the throne all persons who were members of the Roman Catholic Church or married a Papist. It settled the throne in this order, William and Mary, the children of Mary and in default of issue the Princess Anne and her children, and in default of issue, the children of William. The First Mutiny Act (called the Army Act) was also passed the same year, prescribing, among other things, that no standing army was to be maintained without consent of parliament; this Act was to be renewed every year thus necessitating the annual meeting of parliament. The Triennial Act of 1694 limited the duration of parliament to three years.

In 1701 the fifth parliament (full of Tory majority) of William and Mary, passed the Act of Settlement or Succession, after the death of the only surviving child of Anne. Its main provisions were: (1) the throne, after Anne's death, was settled on Sophia, Electress of Hanover, who was the daughter of James I's daughter Elizabeth, and her heirs, being Protestants; (2) the sovereign must be a member of the Church of England; (3) no war shall be undertaken in defence of the constitutional possession of the sovereign without the consent of parliament;

(4) the sovereign is not to leave England without the consent of Parliament;[1] (5) Judges are to hold office during good behaviour and can only be removed on an address from both houses of parliament; (6) pardon under the great seal is not pleadable in bar of impeachment; (7) no alien can sit in parliament nor in the Privy Council nor hold lands from the crown; (8) all matters within the jurisdiction of the Privy Council are to be transacted there and its decisions signed by all its members (repealed in 1705); (9) no pensioner or place-holder is to sit in parliament (repealed in 1705). In 1707 parliament passed the Act of Union with Scotland, by which the separate entity of Scotland as a state under the king of England was ended and the United Kingdom of Great Britain came into existence, with one parliament.

Under the Hanoverians. When George I ascended the throne in 1714, a new chapter began in the history of parliamentary supremacy. As the king, and also his successor son George II did not know English, they left the real work of administration to parliament and ministers. Walpole became the First Prime Minister of England and the Cabinet System came into existence. The legal prerogatives of the crown were still there, but they were now being exercised at the will of the responsible ministers of the crown who represented the majority will in the House of Commons. The House of Commons became supreme as it secured the sole right of taxation; the practice of granting supplies annually came into existence and this necessitated the annual meeting of parliament. George III knew English well. Born in England, he was fully conversant with the British system of government; he made an attempt, on ascending the throne in 1760, to rule and govern and exercise his prerogatives personally and not allow the ministers to do it. Later the king came into conflict with successive ministries; the loss of the American colonies was largely due to his stubbornness. The king's failing health and successive illnesses (in 1765, 1788, 1801 and 1804) led to revival of the supremacy of parliament and the responsibility of the ministers to the House of Commons. When George III developed insanity in 1810, he was permanently incapacitated and the real power passed into the hands of parliament.

The British parliament as then constituted did not reflect the real will of the electorate. The movement for reform of parliament was continued throughout the nineteenth century. Three successive Reform

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[1] This was repealed in 1714.

Acts (of 1832, 1867 and 1884-85) were passed to stop corruption in elections, to extend the franchise to a very large percentage of citizens and to diminish the influence of the rich people over elections. The long reign of Queen Victoria (1837-1901) witnessed the rise of great statesmen in parliament who by their principles and policies made the House of Commons the holder of real power in the state. Party system of government became the fundamental (though unwritten) feature of British political system. In return for immunity from all responsibility and an agreed civil list, the monarch surrendered for all practical purposes the royal rights and prerogatives (without losing the legal powers and position) into the hands of the responsible ministry. In this way, after a struggle lasting several centuries, the British Parliament acquired full legislative powers and complete control over the executive.

Nature and Extent of Parliamentary Sovereignty

From the above description of the origin and growth of the British Parliament and the position it now occupies in the governmental system of England, it is clear that of all organs of government in that country, Parliament is undoubtedly the most powerful and supreme organ. Different writers on the constitution and constitutional law of England have discussed the sovereignty of the British parliament as distinguished from the legislatures of other democratic states. Prof. Dicey says: "The sovereignty of Parliament is (from a legal point of view) the dominant characteristic of our political institutions". He has, while discussing the nature and extent of parliamentary sovereignty quoted the classical passage in Blackstone's Commentaries, expressing the view of Sir Edward Coke (Fourth Institute, p. 36) which runs thus: "The power and jurisdiction of parliament, says Sir Edward Coke, is so transcendant and absolute that it cannot be confined, either for causes or persons, within any bounds". The passage further states, in relation to powers exercised or exercisable by parliament, that "It hath sovereign and uncontrollable authority in the making, confirming, restraining, abrogating, repealing, reviving and expounding of laws, concerning matters of all possible denominations, ecclesiastical or temporal, civil, military, maritime or criminal: this being the place where that absolute despotic power, which must in all governments reside somewhere, is entrusted by the constitution of these kingdoms. All mischiefs and grievances, operations and remedies, that transcend the ordinary course of the laws, are within the reach of this extraordinary

tribunal. It can regulate or new-model the succession to the Crown ; as was done in the reign of Henry VIII and William III. It can alter the established religion of the land; as was done in a variety of instances, in the reigns of Henry VIII and his three children. It can change and create afresh even the constitution of the kingdom and of Parliaments themselves; as was done by the act of union, and the several statutes for triennial and septennial elections. It can, in short, do everything that is not naturally impossible; and therefore some have not scrupled to call its power, by a figure rather too bold, the omnipotence of Parliament. True it is, that what the Parliament doth, no authority on earth can undo."[1] Emphasising the extent of Parliament's sovereignty, De Lolme used words which have become proverbial. He said: "It is a fundamental principle with English lawyers, that Parliament can do everything but make a woman a man, and a man a woman". Since these views were expressed by Coke and De Lolme much water has flowed down the Thames, the Ontario, the Ganges, the Indus and the Irawadi. Let us examine the truth of the above statements regarding parliamentary sovereignty.

There are different points of view from which sovereignty of parliament can be discussed, namely, legal sovereignty in theory, actual sovereignty in practice, internal sovereignty (regarding its authority over its own composition, tenure, and powers, and regarding extent of its law-making for England or the United Kingdom), and external sovereignty (relating to its power of law-making affecting either the different parts of the British Empire or Commonwealth and foreign states including international bodies).

Legally speaking Parliament is still sovereign, because no law made by it can be questioned in any court of law, nor is there any limit prescribed by any authority regarding parliament's power to make laws. The law-making power of the American Congress is limited by the American constitution which defines those powers in section 8 of Article I. The American States have all other powers not given to the Congress by the constitution. As the Supreme Court has the power to enforce the supremacy of the constitution, a Congressional law can be invalidated, and there have been many such cases of invalidation of congressional law on the ground of that law being inconsistent with the constitution. On the other hand, the jurisdiction of the British Parliament with regard to its power of law-making has nowhere been

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[1] Quoted by Dicey in *Law of the Constitution*, pp. 41-42,

defined or prescribed. British courts cannot question the legality of any law made by parliament. British parliament is, therefore, a sovereign legislature as opposed to a non-sovereign law-making body like the legislative assemblies or councils existing in those parts of the British Empire which are not fully self-governing. The Act of Settlement of 1701 is a good illustration of parliamentary sovereingty as it prescribed the succession to the British throne and abridged the right of a successor to the throne in regard to profession of religion or matrimonial alliance. Edward VIII had to abdicate the throne because he wanted to marry a woman of American descent and twice divorced, with the right of succession to the future issues; he had declined the offer of a morganatic marriage which would have debarred his issues (from that marriage) from succession to the throne. Again, parliament prescribes its own tenure. In 1716 parliament repealed the Triennial Act of 1694 (which had prescribed a three-year term of the House of Commons) and passed the Septennial Act increasing the term to seven years, and thus the then House of Commons extended its own life by four years, thus avoiding the possibility of riots which were apprehended if election had been ordered in the existing circumstances and the fear of a Jacobite majority hostile to the Hanoverians coming into the House of Commons. In passing this Act parliament asserted its sovereignty showing that it was not the agent or trustee of the electors but that it had a right to pass or repeal any laws it chose. In 1911 parliament passed an important measure (Parliament Act, 1911) curtailing the powers of the House of Lords and fixing the term of the Commons at five years. And yet the same parliament extended its own life in 1916 (disregarding the limitation of five years) in order to avoid an election during the course of World War I.

Government of India Act, 1919, in the preamble, laid down the power of parliament as the sole judge regarding the various stages of granting self-government to India. The Government of India Act, 1935, repealed the Act of 1919 but not its preamble. But pressed by the conditions existing in India in 1947 parliament had to pass the Independence of India Act granting independence to India, freeing the Indian Princes from all obligations to the Crown, and created the two dominions of India and Pakistan. But he would be too bold a person who would agree with Coke in asserting that parliament can now "repeal" or "abrogate" this enactment of 1947, and "revive" the Government of India Act, 1919 or 1935. True, parliament by its own enactment created the dominions of India and Pakistan in 1947, but

it has no legal authority now to undo this fact by repealing the Act of 1947.

The Statute of Westminster, 1931 is another important example of the practical limitations on the legal sovereignty of parliament. To give legal recognition to the actual status which the dominions had by then acquired and accepted by the Imperial Conference resolution in 1930, parliament passed the Statute of Westminster, 1931. In para 2 of the preamble, the Statute limits the power of British Parliament as set out in the Act of Settlement of 1701 and shares it with the Dominions, in these words : "And whereas it is meet and proper to set out by way of preamble to this Act, that, inasmuch as the Crown is the symbol of free association of the members of the British Commonwealth of Nations, and as they are united by a common allegiance to the Crown, it would be in accord with the established constitutional position of all members of the Commonwealth in relation to one another that any alteration in the law touching the Succession to the Throne or the Royal style and titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom". So when the crisis over Edward VIII's decision to marry Mrs. Simpson arose, Baldwin made it clear to the king that it was doubtful if the Dominion Parliaments would agree to a change in the Succession Act of 1701. In fact Baldwin kept the Dominion Governments informed of all the developments in connection with that crisis which was averted by Edward's abdication, but not without previously obtaining the assent of the Dominions to the introduction of the Bill to effect the abdication. The Irish Free State passed its own law to legalise the abdication. The Government of the Union of South Africa, in order to make the Royal Marriages Act of 1772 a part of the law of the Union, and holding that there had been an abdication passed its own enactment to date it back a day earlier than the passing of the Statute of Westminster.

Para 3 of the Statute lays down that "no law hereafter made by the Parliament of the United Kingdom shall extend to any of the said Dominions as part of the law of that Dominion otherwise than at the request and with the consent of that Dominion".

Section 2 of the Statute repudiates the applicability of the Colonial Laws Validity Act, 1865, to the Dominions, and further states that no Dominion law "shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of Parliament of the United Kingdom or to any order, or

rule or regulation made under any such Act, and the powers of the parliament of a Dominion shall include the power to repeal or amend any such Act, order, rule or regulation, in so far as the same is the part of the law of the Dominion". This has restricted the sovereignty of the British Parliament to legislate for the Dominions, and at the same time empowered a Dominion parliament to repeal or amend any Act of the British Parliament which might be repugnant to the law-making power thus acquired by a Dominion. Under Section 4 of the Statute the British Parliament cannot pass any law or Act applicable to a Dominion except at the express request and assent of the Dominion concerned. This is further clarified by section seven of the Statute. These changes (restrictions) in the sovereignty of the British Parliament have been made because of the changed and changing conditions in the former British colonies now called Dominions. Lord Passfield, in supporting these provisions in the Statute of Westminster 1931, stated, while the Bill was being discussed in the House of Lords (November 26, 1931): "An Act of Parliament can in many cases,. . . ., be an instrument of freedom and not necessarily an instrument of restriction. In this case this is an instrument of freedom—to give freedom to the Dominions, and to this country in its relations with the Dominions, to grow and develop without the fetters of an Act of Parliament. . . . . I believe the British Commonwealth of Nations cannot be maintained on the basis of legal fetters and Acts of Parliament reaching from one end of the earth to the other." It is true that the British Parliament in the exercise of its sovereignty *vis-a-vis* the Dominions, by its own Act, removed the "fetters", but it is absurd now to assert that it can re-extend its sovereignty, as Coke and De Lolme might have suggested, by "repealing" or "abrogating" the Statute of Westminster, and by "reviving" the Colonial Laws Validity Act, 1865.

The British Parliament, by its own Acts, granted complete independence to Burma and Dominion status to Ceylon, but it would be absurd to say that Parliament can reassert its sovereignty over these countries by repealing the relevant Acts which granted independence to the one and Dominion status to the other. Similarly it cannot abrogate the Act recognising the independence of Ghana. Any attempt to undo these facts will be illegal.

The extent of sovereignty of Parliament as envisaged in the statements of Coke and De Lolme or discussed by Dicey is inapplicable to modern conditions, and is, therefore, a myth. And yet it is still true to say that the British Parliament is sovereign as no other legisla-

ture in any other country is. This peculiar sovereignty of Parliament may be stated thus:

(1) The British Parliament is legally sovereign, possessing unlimited and unquestioned authority to make any law for the United Kingdom of Great Britain and Ireland; any change, however, in the title and succession to the throne can be made with the consent and concurrence of the Dominion Parliaments, as provided for in the Statute of Westminster, 1931. No court of law in the Kingdom can question the validity of any Act passed by Parliament; in this way it is more powerful than the American Congress which under the American federal system has limited legislative powers. There is no doctrine of judicial review in England. But Parliament cannot disregard the *Rule of Law* and deprive citizens of their rights; The Defence of the Realm Act of 1914-15 and the Emergency Powers Act of 1920 were special measures passed to meet emergencies, and repealed after the emergency period was over.

(2) The British Parliament is sovereign also in the sense that it passes all laws, whether an ordinary measure creating a local board, a turn-pike bill, or a measure like the Statute of Westminster or the Independence of India Act, 1947, or the Abdication Act of 1936, by the same ordinary process of law-making. In this respect, therefore, it is both an ordinary legislative body as well as a "Sovereign Constituent Assembly"; there is no distinction between an ordinary law or a constitutional law in England so far as the law-making power of Parliament is concerned. If Parliament so chooses, it can abolish monarchy and declare England a Republic, or abolish the House of Lords, by a simple measure discussed and passed by the same process by which an ordinary law is passed. Such a far-reaching law-making power is not possessed by any other legislature.

In the United States any change in the constitution (even the term of the President or the order of succession in case of the premature demise of the President) can be made by an amendment of the constitution for which the process prescribed by the constitution is:

> "The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or on the application of the legislatures of two-thirds of the several States, shall call a convention to propose amendments which, in either case, shall be valid to all intents and purposes, as part of the Constitution, when ratified by the legislatures, of three-fourths of the several States, or by

> conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress..."

Nor is the French Parliament (in the Fourth Republic) empowered to change the constitution of France. The constitution prescribes the following method for its own revision:

> "Revision is to be decided by a resolution adopted by an absolute majority of the members composing the National Assembly. The resolution stipulates the object of the revision. After at least three months it undergoes a second reading under the same conditions, unless the Council of the Republic, to which the resolution has been referred by the National Assembly, has adopted by an absolute majority the same resolution. After the second reading, the National Assembly drafts a bill for the revision of the Constitution. This bill is submitted to Parliament and voted by a majority in the manner of an ordinary law. It is submitted to a referendum unless it has been adopted on a second reading by the National Assembly by a majority of two-thirds or by a majority of three-fifths by each of the two houses."

The bill is promulgated by the President within eight days of its adoption. But no revision touching the existence of the Council of the Republic can be made without the concurrence of that Council or resort to a referendum.

In Switzerland a constitutional amendment can be made by a referendum at which the law is considered to have been passed if accepted by a majority of the voters in a majority of the cantons and also by a majority of the voters in Switzerland.

In short, in every other country of the world with a modern or democratic constitution there is a distinction between a constitutional law and an ordinary law, and only the latter variety of law can be made by the legislature, while the former can be made by a body prescribed in the constitution and different from the legislature. It is the British Parliament alone which has unlimited legislative power, both for constitutional and ordinary law-making; this is the peculiar sovereign character of that Parliament.

(3) The legal sovereignty belongs to Parliament without doubt, but it is subject to the final and political sovereignty of the electorate whose will ultimately prevails. Parliament dare not pass a legislation in the teeth of adverse public opinion which reflects the will of the

electorate through the press and public meetings. As at every election to the House of Commons, the electorate actually exercises its political sovereignty by prefering to vote for the candidate of its choice, the House is expected to make only those laws the object of which had either been approved by the electorate or which were not disapproved by it.

(4) In the actual process of law-making committees of the House play an important role. If the appropriate committee to which a bill is referred, rejects any part or parts of the bill and suggests alternative provisions, the House accepts the recommendation of the committee in order not to offend public opinion outside the House.

(5) When a bill is before Parliament, the public criticism or suggestions for improvement in it made by corporations or bodies affected, for example, the trade unions or similar other associations, go a great way in determining the final vote of the House. Therefore, in actual practice Parliament keeps its ears to the ground in order to assess public opinion expressed through the various associations and bodies affected by any proposed legislative manner so that the final legislation passed by it may not arouse public protests and discontent.

(6) Parliamentary sovereignty is further restricted in actual practice by obligations arising out of Britain's membership of the United Nations and other international organisations, in all matters for which the international commitments are made by the British government. Membership of the United Nations restricts the external sovereignty of every member-state, and Britain cannot be an exception. Parliament, therefore, has to adhere to the principles enunciated by or decisions laid down by the UN or other international bodies. It dare not make a law infringing upon Human Rights or legalising slavery within her borders or in any of the territories over which its legislative control extends. Membership of the International Labour Organisation, for example, restricts the sovereignty of Parliament with regard to laws regulating, say, hours of work of the labourers.

Such then is the extent and nature of Parliamentary sovereignty. It clearly nullifies the maxim laid down by Coke or De Lolme, but establishes the fact that the British Parliament's legislative powers are far greater than those of any other legislature in the world.

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7

PARLIAMENT : COMPOSITION AND LEGISLATION

There is no country in the world in which everything can be provided for by the laws, or in which political institutions can prove a substitute for common sense and public morality.

—DE TOCQUEVILLE

* * *

In effect, to follow, not to force, the public inclination, to give a direction, a form, a technical dress, and a specific sanction, to the general sense of the community, is the true end of legislation.

—BURKE

House of Commons

Strength of the House. The British House of Commons is the first or the lower chamber, although it was the second in point of origin and growth, having been established much later than the House of Lords, as described in the previous chapter. Ever since the representation of the boroughs and shires in the Model Parliament of 1295 was introduced, the composition of the House of Commons has varied from time to time. During the reign of Edward I there were 74 knights and 200 burgesses ; under Edward III and the Lancastrians, 180 burgesses ; and under Henry VII, 200 burgesses. Between Henry VIII and Charles II, 180 burgesses were added by royal charters to boroughs ; after that no new borough was created till 1832. In 1707 the House of Commons contained 513 members, 45 were added by the Union with Scotland in that year, while in 1800 the Union with Ireland added another 100 Irish members. Up to 1928 the membership of the House remained at 670, but by the *Representation of the People Act* of that year it was fixed at 615 which continued till the year 1945. The *Representation of the People Act, 1948,* abolished the representation of the Universities (putting an end to double votes enjoyed by the electors of the University constituencies) and thus reduced the membership by 12, and fixed the strength of the House of Commons at 625 which was given effect to in the elections of 1950 and 1951.

Representation in the Commons. It has already been stated[1] that, before the year 1832, the House of Commons was not a true representative of the masses and did not reflect the opinion of the people; it was a body packed with aristocrats and their nominees or puppets. The three Reform Acts of 1832, 1867 and 1884 widened the franchise; the Act of 1918 practically introduced manhood suffrage (*i. e.* all male adults who had put in 6 months residence, or occupied business premises, or held a university degree were given the right to vote), granted franchise to women of the age of 30 years and over, and introduced a uniform franchise for county and borough constituencies. This Act made other provisions of considerable importance, such as for instance a candidate failing to obtain atleast one-eighth of the total votes polled was to forfeit his security of £ 150; one member was to be elected for every 70,000 of the persons in Great Britain, and one for every 43,000 in Ireland. Ten years later the Representation of the People (Equal Franchise) Act, 1928, was passed. According to this Act universal adult suffrage has been introduced and property qualification abolished. The franchise is now enjoyed by all persons of the age of 21 years or over, male or female, who have been living in the constituency on June 1, and have resided there for at least thirty days at the time of registration, and put in three months residence either in the constituency itself or in the same parliamentary county or borough and are British subjects owing allegiance to the King. "British subjects" means those who are so by birth or naturalisation. The term includes all the citizens of the Commonwealth residing in England and is not confined to Englishmen only. In the case of occupiers of business premises, annual rental value must be at least £10. Certain categories of persons are disqualified from voting rights. These include criminals, idiots, infants, aliens, peers, and paupers maintained in public institutions. Those who have been convicted by courts for corrupt practices at elections are disfranchised. A person may not vote at a general election in more than two constituencies, *i.e.*, in one constituency he may vote for residence qualification and in another by reason of his business qualification.

Constituencies and Electorate. Till 1944 the 615 members of the Commons were distributed thus: England 492, Wales 36, Scotland 74, and Northern Ireland 13. There were 595 constituencies in all, of which 576 were single-member; 18 sent two representatives each, and

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[1] *See* chapter 4.

one (the Scottish Universities) three representatives. During the Second World War, due to migration of population, the number of electors in 20 constituencies exceeded 1,00,000 in each. Hence in October 1944, royal assent was given to the House of Commons (Re-distribution of Seats) Act whereby these 20 constituencies were split up into 45 and the strength of the House increased temporarily to 640 and this was the total strength till the election of June, 1945. The general constituencies are so arranged as to be almost equal in population ; there are nearly 50,000 voters in each. The total electorate and parliamentary seats in Great Britain were distributed thus in 1950 : England, 28,374,288 electors and 506 seats, Wales, 1,802,356 electors and 36 seats, Scotland, 3,370,190 electors and 71 seats. Northern Ireland has 12 seats. In each place the females far out-number the males. This factor has considerably affected the results of election since 1928 as women are more inclined to exercise sobering influence upon politics than men. In the year 1948 Redistribution of Seats Act was passed according to which the Universities have been deprived of their special representation and the total strength of the House has been fixed at 625. The same Act also abolished the fifteen two-member constituencies. The 625 members are now elected from as many constituencies. Formerly the constituencies were arranged at irregular intervals as and when Parliament directed but in 1944 permanent boundary commissions were appointed and on their recommendations constituencies were arranged in 1944.

Duration of Parliament. Before the Glorious Revolution of 1688, there was hardly any obligation on the King for consulting parliaments regularly. The Bill of Rights (1689) definitely laid down annual convening of parliament. The Stuarts had been extremely irregular in calling parliament ; sometimes they ruled without any parliament at all. The Triennial Act of 1694 fixed the normal term of each parliament at three years. But, in 1715, the Whig ministry of George I, apprehensive of the machinations of the Jacobites, and fearful lest a general election should endanger the stability of the new dynasty (the Hanoverian), introduced in the House of Lords a bill which when passed by the two Houses became the Septennial Act of 1716. It extended the duration of parliament to seven years. This increase in the duration was also considered necessary because, as Sir Richard Steele while supporting the septennial measure in the Commons spoke : "Ever since the Triennial Bill has been enacted the nation has seen a series of contentions ; the first year of a triennial Parliament

has been spent in vindictive decisions and animosities about the late elections; the second session has entered into business,.... the third session has languished in the pursuit of what little was intended to be done in the second; and the approach of an ensuing election has terrified the members into a servile management, according as their respective principles were disposed towards the question before them in the House". Later, attempts were made to revert back to triennial elections. The Parliament Act of 1911 reduced the duration of the Commons from seven years to five years, although the same Parliament which was responsible for this Act, later passed a resolution in 1916 increasing its own life beyond five years on account of the exigencies of the Great War which needed concentration of the country's attention on its successful prosecution without creating the disturbance of a general election. Thus, at present, the normal life of each parliament (*i. e.* House of Commons) is five years. But earlier dissolutions sometimes take place when the King permits a Prime Minister to make an appeal to the electorate. The following table indicates how the life of successive parliaments has been much smaller than the statutory duration:

Date of first meeting	Date of dissolution	Duration in years, months and days		
		Yrs.	Months.	D.
February 13, 1906	January 10, 1910	3	11	24
February 15, 1910	November 28, 1910	0	9	13
January 31, 1911	November 25, 1918	7	9	25
February 4, 1919	October 26, 1922	3	8	22
November 20, 1922	November 16, 1923	0	11	27
January 8, 1924	October 9, 1924	0	9	1
December 2, 1924	May 10, 1929	4	5	7
June 25, 1929	August 24, 1931	2	1	29
November 3, 1931	October 25, 1935	3	11	22
November 26, 1935	June 15, 1945	9	6	20
July 21, 1945	February 2, 1950	4	6	12
March 3, 1950	October 5, 1951	1	7	2

This gives a total duration of 44 years 3 months and 24 days for twelve parliaments, *i.e.*, an average of 3 years 8 months and 10 days for each. During the post-war I period the average has been less than three years. The criticism of triennial elections, as made by Sir Richard in 1694, is, however, not applicable to the conditions of the present century because, now-a-days, unlike the seventeenth and eighteenth

centuries, the elections are held so definitely on party lines that there is no need for the majority in a parliament to start its activities anew. The programmes of the parties are always known to the members as well as to the electorate; moreover, the cabinet hold on parliament is now so complete that the latter merely registers the views of the former. Legislation, therefore, follows the general policy of the party in office.

Election to the House of Commons. The present system of election to the House of Commons may be considered under three heads, *viz.*, nomination of candidates, general electioneering campaign, and actual voting and declaration of results. As soon as parliament is dissolved, whether on the expiry of its normal term or on the grant of the King's permission to the Prime Minister to make an appeal to the electorate, each party prepares itself for contesting the elections. It may be mentioned here that each political party has a national organisation and local branches all over the country, *i.e.*, in all constituencies. The national organisation of each party decides the general policy and programme of the party and communicates the same to the local branches.

Nomination of candidates. The nomination of candidates is then the most important work for each party. The local organisation of a party in a constituency recommends the name of that person who is most likely to win the election in the constituency. The popularity of a member, his capacity to bear the expenses of election, his services to the party, and his ability as a legislator are the primary considerations which weigh with the local organisation in making the choice of a candidate. The recommendations of the various local organisations are then formally approved by the national organisation of the party. It is not necessary that the candidate recommended for a constituency should be resident therein. In every parliament there is quite a good number of members who are returned by constituencies in which they do not reside nor have ever resided. Such members acquire fame by their service or ability and are, therefore, gladly adopted by any constituency. For example, Gladstone, during his long parliamentary career, represented at different times five constituencies in none of which he had ever resided. The only legal requirement is that he must be a registered voter in a constituency. Ten registered voters belonging to the constituency must sign a nomination form supplied by the returning officer, nominating the candidate for election. The nomination papers of the candidates are handed over to the returning officer (an *ex-officio* person) who attends either at the town hall or court house or any other convenient

place to receive the papers within one hour fixed for the purpose. Any number of candidates may seek election to a seat from the same constituency. Each candidate is required to deposit a security of £150 which is forfeited in case he fails to obtain at least one-eighth of the total votes polled in the constituency. At each election quite a number of candidates forfeit their security; at the elections of 1945, 1950 and 1951, the number of forfeitures are 181, 461 and 96 respectively. The important leaders of the party, whose presence in Parliament is considered necessary, are set up from the constituencies where the party has the strongest support of the electorate, so that there may be the least chance of the party leaders suffering defeat in elections. These constituencies are called "safe seats" of the party. In most constituencies, there are at least three candidates put up respectively by the three major parties. Besides, the smaller parties may set up their candidates in some of the constituencies. Independent candidates owing allegiance to no particular political party also seek election in some constituencies where they hope to win the support of the electorate because of their personal influence or old services to the constituents.

Cost of elections. In a free and democratic election the party and the candidates have to incur heavy expenditure. In order to discourage corrupt practices the maximum amount which a candidate can spend on his election is laid down in the Election Rules. The maximum limit so fixed has varied in England from time to time. The present limit fixed in July, 1948 is laid down thus: in a county election £ 450 plus 2d. per elector, and in a borough election £ 450 plus 1½d. per elector. This was for the first time enforced in the general elections of 1950. On an average, each candidate spent £ 630. The total election expenditure (for Great Britain) for all parties came to £ 1,160,330 and £ 937,523 for the [illegible]tion of 1950 and 1951 respectively.

Electioneering campaign. When the nominations have been finally made and scrutinised, the political parties, already busy in carrying on electioneering propaganda, revitalise their efforts to appeal to the country through various devices like holding of meetings, pamphleteering, newspapers, radio, and sometimes theatres and cinemas. Each party explains the merits of its own programme and policy and tries to find faults with those of the other parties. The whole country is thus thrown into a whirlpool of election campaign for this is the time when the policy of the future administration of the country is to be actually decided by the people. On the day fixed for election (in all the constituencies), there is witnessed considerable excitement. Prior to 1918

the polling day for each constituency was decided by the returning officer concerned. The result was that parliamentary elections were spread over a week or even longer. This system had its own defects; the result of one constituency influenced the voting in others. Hence, by an Act of 1918 the election was fixed for one polling day for the whole country. This polling day is the ninth day after nomination. The polling hours are from nine in the morning till nine in the night. The voters go to the polling stations and vote by secret ballot.

Declaration of election results. After the voting is finished, the final stage, *viz.*, counting of votes and declaration of results begins. Then is the time of the importance of the returning officer. The votes polled in a constituency are counted and the candidate obtaining the largest number of votes is declared elected; it does not matter what percentage of total votes cast he secures in his favour.

Defects of the system of election to Commons. This system of election is known as the relative majority system, as it merely requires that whichever candidate obtains the highest votes will be elected. It is, therefore, defective inasmuch as it fails in making the legislature a true mirror of public opinion, for in a constituency where more than two candidates contest the same seat it is just possible that the successful candidate may not obtain a majority of the votes and yet be elected to represent his constituency.

An M. P. may not be a true representative. Thus, if we suppose that there are four candidates to contest a seat: A getting 15,000 votes, B getting 14,900, C 14,500, and D 5,100, then A would be declared elected by a relative majority of 100, and would be assumed to represent the opinion of all the voters, including the 34,500 who voted against him.

In the majority of constituencies there are two or three candidates. When there are three, the elector will have a real freedom of choice, but even so, the candidate whose views most nearly correspond with the elector's may not, in his judgment, be a desirable person to be sent to Parliament, or may hold some opinion from which he strongly dissents. Where there are only two candidates, there will always be a large number of electors who do not agree with either; one of them, for example, may be a fervid protectionist, the other an ardent Socialist, and a particular elector may believe strongly that both protection and socialism would be ruinous to the country. Yet, for whomsoever he votes, his opinion will be misrepresented, and his support will be credited to a cause of which he strongly disapproves. What is he to do?

He must either disfranchise himself, or vote merely for the candidate who seems to him less objectionable. Most often he takes the latter course; but the result is that it is never possible to tell, in any particular case, whether the majority which a candidate obtains is a real majority or not, and this is true of the voting throughout the country as a whole. The following figures from the general elections of November 1922, for four of the constituencies, illustrate this point:

Dewsbury

Candidate's name	Party	Votes	
Riley, B.	Labour ..	8,821	Elected
Harvey, T. E.	Liberal ..	8,065	
Peake, O.	Unionist ..	6,744	

Huddersfield

Marshal, Sir A. H.	Liberal ..	15,879	Elected
Hudson, J. H.	Labour ..	15,673	
Sykes, Sir C.	National Liberal ..	15,212	

Kent, Maidstone

Bellairs, Cdr. C. W.	Unionist ..	8,928	Elected
Black, G. Foster	Liberal ..	8,895	
Dalton, H.	Labour ..	8,004	

Portsmouth, Central

Privett, F. J.	Unionist ..	7,666	Elected
Fisher, Sir T.	National Liberal ..	7,659	
Bramsdan, Sir T.	Liberal ..	7,129	
Gourd, A. C.	Labour ..	6,126	

In each of the above examples, the successful candidate obtained only a small minority of votes actually cast, and yet was presumed to be the representative of the majority—nay, of all the electors.

Distortion of popular will. Finally, under the English system of election, the results of the general election are amazing distortions of the popular will. When three parties are in the field, it is mathematically possible that one party might obtain the largest aggregate of

votes and yet not win a single seat in the House of Commons; this would happen if the candidates of the party ran second in most of its constituencies, while the candidates of its rival sometimes won by small majorities and sometimes lost by big majorities. It can very easily happen that a party which has the support of only a minority of the voters may be in majority in the House of Commons; it has happened thrice since World War I. Hence every election becomes a gamble; and this gambling element brings an extremely unhealthy influence into the policy of Governments and the political life of the nation.

Take for example the election of 1918, the coalition which had just carried the country through the war appealed for support. It obtained what was universally regarded as a smashing victory, winning 472 seats in the House of Commons, against 130 won by the anti-coalition party—a majority of nearly 4 to 1. Yet the coalition parties had only obtained 52 per cent. of the votes cast, against 48 per cent, given to their opponents; and if the number of seats had been strictly in proportion to the number of votes cast, the Government would have had a majority, not of 342 but of only 30.

Three elections, at very short intervals followed the collapse of the coalition in 1922, *i.e.*, those of 1922, 1923 and 1924. In the election of 1922 the Conservatives obtained 347 seats in Parliament, a clear majority of 79 over all others. Yet they polled only 38 per cent. of the votes cast, while the Liberals polled 28.5 per cent. and the Labourites 29.5 per cent. The Conservatives, although the largest party, ought not to have gained a clear majority.

(Contested Seats except Universities)

Party	Votes	Contested seats won	Seats in proportion to votes	Votes per seat
Conservative ..	5,381,433	296	208	18,180
Labour and Co-operative ..	4,237,490	138	164	30,706
Liberal	2,621,168	54	101	48,540
National Liberal ..	1,585,337	51	61	31,085
Independents and others	337,443	8	13	42,180
Total ..	14,162,871	547	547	..

It is clear from the above that the Liberals suffered the most, followed by Independents and Labourites; the Conservatives gaining at the cost of others. The House thus elected did not truly reflect the confidence enjoyed by the different political parties.

Disproportionate strength of parties. The election of 1923 was fought on the issue of protection, but the other two parties alike opposed the government. The Conservatives obtained almost exactly the same percentage of votes, namely 38 per cent, as in the previous election, but thanks to the vagaries of the electoral system, they lost 90 seats and were placed in a minority of nearly 100. Even so they obtained 24 seats more than their true quota and the Liberals 24 less than theirs. In view of the issue on which the election was fought, the Conservatives could not but be turned out of office and the Labour party was called upon to form its first government. This was the first "minority government" in modern parliamentary history.

In the election of 1924 the chief feature was the debacle of the Liberals, who obtained only 42 seats as against 108 seats which they should have had according to the proportion of the votes (17 per cent.) cast for them. The Conservatives, on the other hand, with only 47 per cent. of the total votes cast obtained 415 seats against 200 for all others, though their true number in proportion to votes should have been 289. Even in by-elections the Conservatives managed to win a seat on minority votes because of three cornered contests. The election of 1929 gave the Labour party 288 seats as against 224 which they were entitled to for 36 per cent. of the votes cast for them.

The actual result of voting in these two elections was this:

Elections of 1924

Parties	Votes polled	Seats won
Conservative	7,451,132	415
Liberal	3,008,474	46
Labour	5,484,760	151
1929		
Conservative	8,659,639	256
Liberal	5,309,426	59
Labour	8,385,301	288

The House of Commons elected on November 15, 1935, showed the same vagaries of the election system as the following figures indicate:

Parties	Votes polled	Seats won
Conservative	10,496,000	375
National Liberal	866,000	33
National Labour	340,000	7
National (Govt.)	97,000	5
Labour	8,465,000	168
Liberal	1,433,000	19
Others	302,000	8

Although the Government formed in 1935 called itself national coalition, the preponderating majority of the Conservatives reduced it practically to a Conservative government. It will thus be seen that with the rise of the multi-party system after the decline of the old traditional two-party system, the "single-member constituencies" and the "relative majority" election system have deprived the House of Commons of its truly representative character.

The following table indicates the nature of party-election at the elections after 1929:

Year of general Election	Seats with candidates numbering						Total no. of Candidates	Total single member seats	Candidates per seat
	One	Two	Three	Four	Five	Six			
1931	54	409	99	14	..	..	1,225	576	2·10
1935	34	389	146	7	..	..	1,278	576	2·19
1945	3	259	291	42	6	..	1,592	601	2·63
1950	2	113	405	100	5	..	1,868	625	2·99
1951	4	495	122	4	..	..	1,376	625	2·20

Disfranchisement of a majority of voters. This analysis of the post-1918 elections may seem tedious. But it is highly instructive in that it shows that the British system of election actually disfranchises a large majority of the electors. If we could estimate the total of those who are deprived of their votes by unopposed returns, of those whose votes are of no avail because they have voted for unsuccessful candidates; of those who have refused to use their votes because there was no candidate with whose policy they agreed; and of those who have voted reluctantly for somebody who did not represent their views

merely because he was less objectionable than the available alternatives, we should probably find that something like 70 per cent. of the total electorate had either been unable to exercise any influence upon the course of events by the use of their votes, or had been compelled to give their support to some doctrine or policy with which they disagreed.

These absurdities and injustices of the electoral system have long been apparent, and various methods of reform have been advocated for England, and put into practice in other countries. But the question of reform of the system has not not yet been taken seriously by the two largest parties (Conservative and Labour) who are inclined to think that it may be to their advantage to leave things as they are. Both assume that the Liberal Party will soon disappear and each thinks that it will be its heir.

Remedies to remove the defects of electoral system. These defects may be largely removed by the application of such remedies as a "second ballot" or some kind of proportional representation. According to the "second ballot" system, if in a constituency no candidate gets a clear majority over his rivals put together, a second ballot be taken when only the two topmost candidates of the first ballot should be allowed to contest the seat, and whichever of them gets the majority of votes should be declared elected. As regards the system of proportional representation, different devices have been tried with varying degrees of success, in Republican Germany, Belgium, Holland, Denmark, Sweden, Norway, Switzerland and the Irish Free State. It has not so far been tried in the parliamentary elections in England because the English people have a distrust of logic in human affairs although they do admit the soundness of arguments in favour of proportional representation. They do not, however, hold that its success in other countries is, in any way, a reliable guide in England.

Single transferable vote system. The members of the Proportional Representation Society in England today advocate the system of single transferable vote for a solution of the problem. This is one of the different methods of proportional representation. By this system the existing single member constituencies in England would be grouped together into large constituencies, with a minimum of three members and maximum of seven. Whatever the number of members in the constituencies be, each elector would have one vote only ; but he would be entitled to indicate on the ballot paper the order of his preference among the candidates by numbering them 1, 2, 3, 4, etc.

If the candidate of his first preference did not require his vote, or was hopelessly out of the running, the vote would be transferred to his second preference, and if need be to his third, and so on. In no case would his vote be wasted ; it would always help to return somebody. This is the essence of the whole system, the means by which it is ensured that every vote counts. It is only with the counting of the votes that any complexity may arise ; and this does not affect the elector. First, the quota of votes required to elect a candidate must be fixed. Given the number of seats and the number of voters, that is easily decided. This system gives a more accurate reflection of the mind of the country than the present system can ever do. It would give to every elector a real liberty of choice among a number of candidates.

Restrictive Vote and Cumulative Vote. Other forms of the system of proportional representation that may be tried are the restrictive vote and the cumulative vote. In each of these there are multi-member constituencies, but according to the former an elector has less votes than the number of members to be elected, while in the latter he has as many votes as the candidates to be elected but he is at liberty to cast all his votes for one candidate or to distribute them among different candidates.

It must be admitted, however, that the result of the proportional representation may be a multiplication of parties and the abolition of the two-party system of government. But it is not at all sure whether the two-party system is indispensable for the successful working of a parliamentary government. Even under the present system, there are three parties. All that proportional representation may do is to stabilize the balance of parties in the house. There might be three parties or more; but all the parties would present a considerable range of opinion. It is only on the basis of the security and stability which proportional representation alone can afford, that free and responsible criticism can be carried on.

Does the House of Commons truly represent all classes of people ? A representative popular legislature is expected, by the very theory of representation, to mirror the will of the masses without undue preponderance of one particular class at the cost of another. Judging the composition of the British House of Commons from this point of view, we may well inquire : Whom does the House of Commons actually represent ? An analysis of the membership reveals certain interesting features. There is, at the present time, "a division of the

House that roughly corresponds with the class division outside. Members of the two chief parties no longer spring from the same stratum. They differ in birth, education, economic activity, wealth, and in the use to which they put their leisure. And if this is so, it is hardly surprising that they should disagree fundamentally in their political philosophy, aiming at quite opposite national and international ideals,....".[1] In the House of 1931, 188 members held between them 691 directorships of companies of which 152 were chairmanships, and of these members 165 were Conservatives. Of the 52 members of the Labour Party 32 were Trade Union Officials. Most of the titled M. P.'s were Conservatives. The Conservative Party represents, in general, "the man of society" while the Labour Party represents "the man in the street". It may be said that on the whole "The social or agricultural advantages no longer find their counterpart in the industrial or commercial fortunes of the other, and the personal ambition to possess both has ceased to weave a net of common interest among the governing and the opposition parties".

Organization of the House. After the general election is over, the new House of Commons meets to organize itself. The first task is the election of the Speaker. The foremost qualities for the presiding officer of a legislature are decision and impartiality. He must be fully conversant with rules of procedure.

Qualifications of the Speaker. If these conditions are absent the legislature is reduced to a crowdy gathering where there is waste of time, passing of ill-considered laws, lack of confidence in the usefulness of the legislature, etc. Fortunately the English Parliament has established its claim to impartiality of the Speaker. The Speaker is elected for the duration of the House, but if a person is once elected to this office he is re-elected as often as he cares to stand. Party whips meet together and decide upon a candidate to ensure unanimous election. From the moment the Speaker is elected he ceases to be a party man. He gives up his party allegiance and remains perfectly neutral in the legislative combat that almost incessantly goes on between the different parties in the House. He maintains discipline and guides the deliberations. It is for this reason that the office has established its reputation for impartiality. Therefore, at each general election the Speaker's constituency returns him unopposed. Only once the Labour Party chose to set up its own candidate in opposition to the

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[1] Greaves H. R. G.—*The British Constitution*, p. 37.

Speaker, but without success. This further added to the dignity of Speakership.

Duties of the Speaker. In England the office of Speakership is very old, continuing without a break since the fourteenth century.[1] Formerly the Speaker used to be some high government officer and acted in two capacities as the mouthpiece as much of the sovereign as of the Commons. On behalf of the Commons he asked from the sovereign the rights and privileges of the Commons (a practice even now followed as a relic of the past), and he communicated to the Commons the wish of the sovereign. Since 1742 (when Speaker Onslow gave up the office he held) the Speaker has been one of the elected members of the House. The main duties of the Speaker are—to preside over the meetings of the House ; to regulate its procedure and to certify bills, when they have been passed by the House.

Dignity of the Speaker. The Speaker gets a handsome salary and on his retirement from the office, he usually gets a pension and a peerage, the latter not as a matter of right but as a gift of the Crown. In 1928 Speaker J. H. Whitley had declined the honour.

Other officers of the House. Other officers of the House are the Clerk who is in charge of the whole record and is responsible for receiving all notices of questions and bills, and for preparation of agenda under the directions of the Speaker ; the Sergeant-at-Arms who announces the entry of the Speaker into the House and carries out the orders of the Speaker for maintaining order.

Committees of the House. Every new House elects a number of Committees, each of which is entrused with some specific work. The most important committees are the six standing Committees appointed at the opening of each session and remaining unchanged till Parliament is prorogued. Each of these receives the measures falling within its particular field, for examining them and suggesting such changes as might be found necessary. Besides these, there are Select Committees appointed to receive, examine and report upon individual measures, particularly those which involve new principles. There are six Sessional Committees dealing respectively with Public Accounts, Standing Orders, Selection, Public Petitions, Local Legislation and Privileges. And finally, there is the Committee of the Whole House. This is nothing but the whole House resolving itself into a committee when

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[1] The first mention of Speaker is found in the Rolls of Parliament of 1377. The Speaker then was Thomas de Hungerford.

the Speaker leaves the chair, the mace is placed under the table to signify that the House has adjourned, and the chair is occupied by a chairman appointed in each Parliament. This chairman, unlike the Speaker is a staunch party man. When the House sits as a Committee of the Whole the rules of procedure are relaxed; a member may speak as many times as he likes on the same question; motions do not require to be seconded; any matter already voted upon may be reopened for reconsideration. After the Committee of the Whole has finished consideration of a measure, it rises to report when the Speaker resumes the chair, the mace is replaced on the table and the House restarts its regular sitting.

How the committees are appointed. The appointment of the various committees of the House, though theoretically the work of election by the House, is really left to be done by a Committee of Selection consisting of eleven members named by each House at the beginning of each session. In fact the Prime Minister and the Leader of the Opposition agree upon these eleven names which are accepted by the House. The Committee of Selection then selects members for each Standing or Select Committee and in doing so is not strictly led by party considerations; but in each committee so appointed the various parties are usually represented in the proportion of their strength in the House.

The quorum of the House is forty. When no quorum is present a warning bell is rung and if within two minutes members do not come in to complete the quorum, the Speaker adjourns the House.

Rules of Procedure in the House. The House makes it own rules of procedure, which are adhered to during the course of its sittings. Some of these are: in the debates no reference is to be made to debates in the other House, or to any matter which is *sub-judice*; name of the King must not be mentioned disrespectfully or to influence the House; treasonable or seditious words should not be spoken, nor should obstructionist tactics resorted to; a member may refer to notes but not read out his speech; no reference to another member by name is permitted; the Speaker's rulings must be obeyed. The House has adopted several devices for curtailing discussion to expedite business. The Speaker or chairman may name a person who is guilty of obstruction or misbehaviour, when the question of suspension is put, and if carried, the member can be expelled for such time as necessary but not longer than the rest of the session.

Devices for curtailing discussion. The device of *closure* is resorted to in order to stop a debate or speech. A member moves that

"the question be now put" and if the Speaker or chairman accepts it, he stops further debate if 100 members rise in support of the measure and it is carried. *Guillotine* is the device by which the time limit to speeches is fixed for the stages of a bill. During the Committee of the Whole House or at the report stage the chairman may choose only important clauses or amendments for discussion thus discarding some amendments by hopping from one important clause to another (like a kangaroo) leaving in between minor or unimportant clauses which are taken as having been accepted. This device is called *Kangaroo*.

Obligations and privileges of members. The members of the House have certain obligations and enjoy certain rights and privileges which the Speaker demands of the sovereign at the first assembling of each new Parliament opened by the sovereign. Each member, after his election and before taking part in the proceedings as a member of the House, has to subscribe to the ordinary parliamentary oath, which runs: "I.. do swear that I will bear true allegiance to His Majesty King George VI, his heirs and successors according to law. So help me God". He has to observe the rules of procedure of the House and obey the rulings of the Speaker. Some of the rights of members are £ 1,000 annual salary, freedom of speech, freedom from arrest during the session of Parliament and forty days before and after the session, moving bills and resolutions, asking questions to be answered by the cabinet.

Rights and privileges of the House as a body. The House as a body enjoys certain rights and privileges. It enjoys collectively through the medium of the Speaker right of access to the Crown. It has the right to have the most favourable construction placed upon its proceedings. The Speaker, if he likes, may exclude strangers from the House; he may also prohibit publication of its debates by strangers or the public; the House controls its due composition; it can punish its own members or outsiders for contempt of the House.

Rights and privileges of individual members. The members of the House of Commons enjoy certain individual rights and privileges. The first is that of freedom from arrest. It extends only to civil arrest, other than arrest from contempt of court. It extends to members for a period of forty days before and after a meeting of parliament. The second is that of freedom of speech finally secured in the Bill of Rights of 1688. This is the most important right which members of a democratic legislature enjoy. They are not liable to prosecution before a court for having said anything in the House. But members

have to observe decency and decorum in their speeches; they cannot use unparliamentary language.

The House of Lords

"The House of Lords came into existence in the first blithe unconsciousness of political development. It was perfectly natural for conquerors and the owners of great estates to give counsel to the Crown, natural, too, for the learned and propertied ecclesiastics to form part of the empowered circle of the Great Council".[1] The present House of Lords is, thus, the historic representative of the Anglo-Saxon *Witenagemot* which was replaced, during the Norman times, by the *magnum concilium*. From very early times till today the King has the prerogative to create peers who in most cases, automatically acquire seats in the House of Lords. There are five categories of peers; in descending order of rank they are: Dukes who at present number 30; marquesses who number about 27; the earls numbering about 130; the viscounts who are relatively fewer and number about 90; and the barons who form the majority and are now over 500. Altogether there are at present about 870 members of different categories of members in the House of Lords. Peerage is conferred on persons who have distinguished themselves in any profession or done signal service to the nation. J. Brown, however, makes fun of peerage when he says: "A fool, indeed, has great need of a title, it teaches men to call him count or duke, and to forget his proper name of fool."

Why the name House of Lords? Although the British House of Lords is the first legislative Chamber in England—nay, in the world—from the point of view of historicity, it is called the Second Chamber on account of the nature of its present powers and functions. Sometimes the House is called the House of Peers, but it is not so in reality because neither all peers have seats in the House nor are all its members peers. Thus, peerage and the House of Lords do not connote the same thing. All Scottish and Irish peers are not members of the House of Lords; on the other hand, Bishops and Lords of Appeal, who are members of the House, are not peers. Peerage includes in it the hereditary right which some Lords of Parliament do not enjoy.

Prerogative of the King to create peers. As already said, it is the King's exclusive prerogative to create peers, and he can create as

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[1] Finer, Herman—*Theory and Practice of Modern Government*, p. 678.

many peers as he pleases, subject, however, to some restrictions. But the King exercises this prerogative on the advice of the Prime Minister. Each year on New Year's Day or King's Birthday new peers are created. A retiring Prime Minister or Speaker of the House of Commons is offered peerage. Some of former Prime Ministers, like Gladstone. Lloyd George and Churchill declined peerage. On 27th July, 1958, Queen Elizabeth created Britain's first four "life peeresses—first women in history" who will be allowed to sit and vote in the hitherto exclusively male House of Lords. She also created ten male life peers—barons whose titles will die with them instead of being handed down to their descendants. The four baronesses are: Dae Katharine Elliot, 55, former chairman of the National Union of Conservatives and widow of Colonel Walter Elliot, who was a Conservative Party elder statesman; Stella, Dowager Marchioness of Reading, who has been a prominent public figure and identified with many public causes over many years; Mary Irene, baroness Revensdale, 62, who is already a baroness in her own right by inheritance, and is also a prominent public figure; Mrs. Barbara Wootton, prominent educationist and former professor of social studies at the University of London.

Among the men who thus join the total of nearly 850 mostly hereditary peers of the Upper House of Parliament are Sir Robert Boothby, 58, Conservative member of Parliament and well-known television personality, and Sir Edward Twining, 59, the former Governor and Commander-in-Chief of Tanganyika.

The creation of the life peers stems from a recent decision of the Conservative Government, aimed at giving a more democratic quality to the present chamber. Labour members, for instance, are outnumbered at present by Conservatives, Liberals and other non-socialists by about 15 to one. The creation of life peers has been suggested from time to time and the bill to create them became law early this year despite stiff Labour opposition. The Socialists did not object to the proposition of life peers, but considered the Government was only toying with the whole question of House of Lords reform. (The husbands of the new life peeresses will get no title. They will continue to be called "Mr.", while their wives are addressed as "lady" or "baroness". But the wife of a life peer will have the title of baroness for her lifetime and their children will during this period be known as "the honourable." Firstly, according to the Act of Union with Scotland, no new peer of Scotland can be created. Secondly, the Act of Union with Ireland provides that the Crown may create one peer of Ireland for

every three that become extinct after the date of Union (1800) until the number falls to one hundred, and this was achieved by the year 1921; since 1922 no Irish peer has been created nor any vacancies filled up so that by 1950 only seven Irish peers were left and in course of time these will also disappear. Thirdly, the King cannot grant afresh a peerage the holder of which has gone through the form of surrender, and in fact, a peerage cannot be surrendered for the House resolved, in 1664, that "no peer of the realm can drown or extinguish the honour (for it descends to his descendants), neither by surrender, grant, fine, nor any other conveyance to the Kings", though in 1919 Viscount Astor tried to resign his peerage to continue his membership in the Commons but Parliament refused to pass the necessary legislation to validate resignation. Finally in the case of grants of real estates the King cannot create a peerage with limitations which are not recognised by law.

Who composes House of Lords? The House of Lords is composed of three kinds of members: (a) *Hereditary Lords of Parliament* who include, besides Princes of the Blood Royal, the five classes of English peers, *viz.*, dukes, marquesses, earls, viscounts, and barons; these peerages descend to the eldest son (b) *Non-Hereditary Lords of Parliament*, who include 16 peers of Scotland, elected from amongst themselves, for each Parliament (the remaining Scottish peers not so elected as Lords of Parliament continue to enjoy privileges of peerage but cannot seek election to the House of Commons) and 28 Irish peers, elected for life as Lords of Parliament by the Irish peers from amongst themselves, (the other Irish peers, not elected to the House of Lords may seek election to the House of Commons).[1] (c) *Life Lords* : these include the 26 Lords Spiritual, *i. e.*, 2 Archbishops (of Canterbury and York) and 24 Bishops, and 6 Lords of Appeal-in-Ordinary who must be barristers of at least fifteen years' standing, or who must have held some high judicial office. The Lords of Appeal are appointed by the Crown (are removable by it on a joint address by both Houses of Parliament) and receive a salary of £6,000 per annum. All these Life Lords sit and vote in the House for life. Formerly peers could vote by proxy, but since 1868 no vote by proxy is allowed, and each peer must be present to record his vote in the House.

Obligations and privileges of Lords. The Lords of Parliament

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[1] It has already been remarked that the total number of Irish peers in 1950, was 7, and that even this will disappear in a few years.

are under certain obligations and enjoy some special privileges. Every peer, whether a Lord of Parliament or not, has the right of personal access to the King. A Lord of Parliament who has not taken the oath prescribed by the Oaths Acts, 1866, or who is not at least 21 years of age, is not entitled to sit and vote in the House. If a Lord of Parliament has been convicted of treason or felony, he is not entitled to sit and vote in the House until he has served out the sentence. No one who is not a British subject may receive a writ of summons to the House of Lords. Nor is a writ of summons issued to a bankrupt peer. Once an hereditary peer is summoned to the House of Lords, the right of summons passes to his heir. When the first Lord Sinha of Raipur, who used to receive writ of summons to the House of Lords died, his heir and successor, the present Lord Sinha, did not receive the summons to the House as he was required to prove that his father did not suffer from the disqualification of polygamy. The question was referred to the Committee of Privileges of House of Lords, which reported in favour of Lord Sinha who now receives the writ of summons and attends the House. Every Lord of Parliament enjoys freedom from arrest when Parliament is sitting or during forty days before and after a session. This privilege extends also to the Lord's servants during session, and twenty days before and after. He enjoys freedom of speech, and the right to record his dissent to a motion upon the journals of the House. He is exempt from serving as a juror. Life peeress, however, can sit and vote in the House. The total strength of the House would be 870, but actual voting strength is about 120.

Privileges of the House of Lords. The House of Lords as a body has certain privileges. It regulates and controls its own procedure. It can commit a person for contempt of the House, even for an indefinite period. It looks to its due composition, and in the exercise of this right it may examine and determine the validity of a newly created peerage, and prevent a disqualified person from participating in its proceedings and declare the seat vacant. Till 1936 the House of Lords enjoyed the right to try members of its order who were indicted for treason, felony or misprison, whenever any peer or peeress claimed the right to be tried by the Lords. This privilege was abolished in 1937 after the necessary legislation introduced by Lord Sankey, had been passed by Parliament and placed on the Statute Book. The abolition of the privilege took place as a result of the case of Lord de Clifford who was charged with manslaughter in a motoring accident. He claimed trial by peers. The trial took place on December 12, 1935. At the end of the trial and on

the question "whether the prisoner is guilty or not," being put by Viscount Hailsham, the Lord High Steward, one by one the 84 peers present declared: "Not guilty, upon mine honour." As a result it was widely felt that the privilege contravened the principle of "equality before the law," and hence the motion of Lord Sankey.

Whom do the Lords represent? The House of Lords, as a second chamber, is a very conservative body, being the stronghold of the propertied class. It does not therefore, represent, in any way, the general opinion of the country. Englishmen often say that the House of Commons represents *everybody* and the House of Lords *nobody*, but a reformed House of Lords would represent *somebody*. The Lords represent themselves and, as such, have always opposed measures likely to encroach upon their rights, or the rights of the propertied class. A very large number of the Lords are rich people as is clear from the fact that "there were 246 landowners in the House in 1931 while directors of banks numbered 67, Railways 64, engineering works 49, and insurance companies 112, to name only a few. In 1927, 227 peers owned a known acreage of 7,362,000 or an average of 32,400 acres each. There were 425 directorates held by 272 Lords representing 761 companies".[1] But there are some peers who are not financially well off; quite a good number did not attend Queen Elizabeth II's coronation in 1953 because they could not afford to get the prescribed costume prepared, as it would have cost them a few hundred pounds. It is not surprising then that the House of Lords has on many occasions resorted to "its full technique of obstruction," notably in 1832 and 1910, and that John Stuart Mill once described it as "a very irritating kind of minor nuisance." But, on many occasions, the party of progressive peers has triumphed in the end and obstruction has been given up. Of the nearly 870 Lords of Parliament at the present time about 850 are capable of sitting and voting in it, the rest being under disqualifications of sex or minority. Of the Lords of Parliament, nearly seven-eighths belong to the five categories of peerage having the hereditary title to the House. Thus in 1942, for example, there were 29 dukes, 40 marquesses, 169 earls, 67 viscounts, and 344 barons. Most of the Lords do not care to attend the House, the average attendance being in the neighbourhood of 80. It has been ascertained that in 1932 and 1933, 287 peers never attended the House; between 1919 and 1931, 112 peers never voted. No more than half of those attending ever care

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[1] Greaves, H. R. G.—*The British Constitution*, p. 54.

to speak. The Lords of Parliament are, it is clear, so indifferent to the work of the House that the utility of the present form of the House has often been doubted and on many occasions attempts have been made to reform it. Speaking of the indifference of the Lords to Parliamentary work, Lord Birkenhead said: "I believe that there are no fewer than seven hundred of your Lordships who are entitled to attend the sittings of this House. Of those seven hundred.....the day-to-day work of the House is really done by about two hundred peers. Of this, I am sure, that no circumstance has done more to impair the reputation and the efficiency in the public esteem of the House as at present constituted than that there are so large a number who make no pretence at all of discharging their Parliamentary duties. Equally, you will not find often, selected in any rank of life, seven hundred men holding office by descent from generation to generation of whom all will bear an unimpeached moral character".[1] He, therefore, pleaded for the reform of the House.

Reform of the House of Lords. The question of the reform of the House of Lords has been one of the most important issues in British politics for nearly a hundred years. Till 1832, even the House of Commons was not a true representative of the masses. But after the first two Reform Acts, the Commons were converted into a truly democratic House, and they began to look upon the Lords as a hindrance to real democracy. Between 1869 and 1888 various attempts were made to reform the House of Lords either in its composition, or in its powers, or in both! Once it was suggested to drop out the spiritual peers. But none of these attempts bore any fruit. In 1906, when the Liberal Party came in power in the Commons, the Lords with their Conservative majority began to block important liberal measures. This led to a controversy between the two Houses; the Commons adopted a resolution that the will of the people's representatives must prevail despite the opposition of the Lords.

The Rosebery Committee. In 1908, therefore, the Lords appointed a committee of their own, under the chairmanship of Lord Rosebery, to suggest a scheme of reform. The committee recommended the introduction of the elective principle in the composition of the Upper House, but this did not meet with the approval of the Liberal majority in the Commons.

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[1] Birkenhead's speech in the House of Lords, 2 April, 1925. Emden—*Selected Speeches on the Constitution*, vol. I., pp. 123-124.

The Bryce Committee suggestions. In 1911, the Parliament Act was passed, which while introducing certain immediate important changes in the relations between the two Houses, promised in the preamble: some legislation for the reform of the Lords in these words "And whereas it is intended to substitute for the House of Lords as it at present exists a Second Chamber constituted on a popular instead of hereditary basis but such substitution cannot be immediately brought into operation." In 1917, a committee was appointed, under the chairmanship of Lord Bryce, to suggest reform of the House of Lords. In its report, submitted in 1918, the Bryce Committee agreed that (*i*) the Second Chamber should not possess co-equal powers with the Commons so as to become a rival of the latter, (*ii*) it ought not to have power to make or unmake ministries, and (*iii*) it ought not to have equal rights in dealing with financial questions. With regard to the future composition of the Second Chamber the committee recommended that—(*a*) no particular set of political opinions should have a preponderating and permanent influence, (*b*) it should be so composed as to reflect the mind and views of the nation as a whole, and (*c*) it should include persons who due to lack of physical vigour for a career in the Commons or want of strong partisan spirit would not care to go to the Lower Chamber. The committee was of the opinion that a Second Chamber must perform the following four functions:

> (1) The examination and revision of bills brought from the House of Commons, a function which has become more needed since, on many occasions during the last thirty years, the House of Commons has been obliged to act under special rules limiting debate.
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> (2) The initiation of bills dealing with subjects of a practically non-controversial character which may have an easier passage through the House of Commons if they have been fully discussed and put into a well-considered shape before being submitted to it.
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> (3) The interposition of so much delay (and no more) in the passing of a bill into law as may be needed to enable the opinion of the nation to be adequately expressed upon it. This would be specially needed as regards bills which affect the fundamentals of the constitution or introduce new principles of legislation, or which raise issues whereon the opinion of the country may appear to be almost equally divided.
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> (4) Full and free discussion of large and important questions such as those of foreign policy, at moments when

> the House of Commons may happen to be so much occupied that it cannot find sufficient time for them. Such discussions may often be all the more useful, if conducted in an assembly whose debates and divisions do not involve the fate of the executive.

To implement this the Bryce Committee recommended 327 as the total membership of the Second Chamber; of these 246 were 'to be elected by members of the Lower House grouped into 13 regional divisions, the Commons from each division electing the *quota* in the Upper Chamber to which this area is entitled and the remaining 81 to be chosen from the whole body of the peers by a Joint Committee of the House.' The term was fixed at 12 years, one-third of the members retiring every four years. No single House of Commons was to elect more than one-third of the 246 members, and thus the scheme was to be put into practice by degrees and not at one particular moment. Speaking of the necessity of reform of the House of Lords, Viscount Bryce said: "It is fifty, or sixty, or seventy years since people have felt that this is a branch of the Constitution in which some repairs must be executed, and the task does not grow any easier by being postponed". He described the benefits that would accrue from a reformed Second Chamber, which would relieve the Commons of the heavy work of legislation, either through a system of Committees or otherwise. He concluded by saying: "It is one of the most urgent of all our problems, for upon its solution the safe and smooth working of the British Constitution and its administrative as well as its legislative machinery must in these anxious times depend."[1] This scheme also fell through.

The Cave and Clarendon schemes, 1929. In 1929, Lord Cave introduced another scheme for the reform of the House of Lords in order to strengthen the House as against the Commons, but it was vigorously opposed by all. In December of the same year Lord Clarendon introduced yet another scheme in the House of Lords to establish greater co-operation between the two Houses for more efficient and less dilatory discharge of their functions. According to this scheme 150 peers were to be chosen by the body of peers, another 150 peers were to be nominated by the Crown for the duration of each Parliament and in proportion to the strength of the parties in the Commons, and the Crown was to have further right to create a limited number of

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[1] Speech in the House of Lords, 21 March, 1921. *Ibid.* pp. 116—122.

life peers. But the scheme did not reach the final stage of approval.

The Salisbury plan of reform. In December, 1933 Lord Salisbury introduced a bill for the reform of the House of Lords, on the basis of certain constitutional principles, *viz.*, final power over finance to belong to the representatives of the people; other legislation to be finally passed if it was the deliberate judgment of the people. The bill limited the total membership of the Second Chamber to 320 with a view to reduce the hereditary principle. These were to include 150 hereditary peers, another 150 Lords of Parliament elected from outside the peerage, and the rest to be Royal Peers, Law Lords and a few ecclesiastics. Besides, the plan proposed a joint committee of the two Houses to certify a bill as a Money Bill, instead of the Speaker doing it as under the Act of 1911. It also provided that if a measure was rejected three times by the House of Lords by an absolute majority of the whole House, the final decision should rest with the next ensuing House of Commons. This scheme too failed to reach the Statute Book.

The need for reform continues. Despite the failure of the various plans and schemes so far suggested for the reform of the House of Lords, the need for reform does exist because of the apparent failure of the Lords to serve the real purpose of a Second Chamber. There are two important functions such a chamber is required to perform, *viz.*, to revise measures passed by the lower chamber and thus to give time for reconsideration, and to provide an opportunity for those (namely members of the upper house) who are unwilling to face an election contest for the lower house to contribute their share to the business of government. Mr. Greaves suggests that such a principle may be served, if (*i*) the Lords of Parliament are elected by the House of Commons during the first month of the first session of each Parliament, to hold office till the dissolution of Parliament, (*ii*) each party in the Commons, elects Lords of Parliament equal in number to half its strength in the Commons, and (*iii*) the Speaker of the House of Commons determines the method of this election. Whatever may be the ultimate plan adopted, there is no doubt that the House of Lords needs reform if it is to be a useful part of the legislative machinery.

Organisation of the House of Lords. Like the House of Commons, the House of Lords also has its own organisation. Its presiding officer is the *Lord Chancellor* who is a member of the cabinet. The Lord Chancellor may not necessarily be a peer, and, therefore, he occupies

a seat on the Woolsack[1] which is outside the limits of the House. Generally, if a non-peer is appointed Lord Chancellor he is raised to the peerage. The House controls its own procedure, the presiding officer (the Lord Chancellor, or in his absence the Deputy Speaker chosen by the Lords) has no power to rule on points of order. At least three peers form a quorum, but generally about fifty peers represent an ordinary session. Peers address the House, while speaking, and not the occupant of the Woolsack. If the Lord Chancellor is a peer, he votes like any other peer, and he votes first if a division takes place, but he has no casting vote. If the votes are equal, the measure fails. Any peer can initiate a debate by just "moving for papers" relating to any matter, at any time, there being no fixed agenda. The daily sittings usually last for an hour or so. The proceedings are usually dull, though the speeches are generally of a high standard because those who attend the sittings and speak are the peers interested in the matter and have vast experience of legislative or administrative work. As the speeches are not made to please the galleries, they are brief and to the point. Besides the Lord Chancellor, the House has a *Chairman of Committees* who takes the chair when the House is in committee and superintends, all measures relating to private Bills. There is a *Gentleman Usher of the Black Rod*, appointed by Letters Patent under the Great Seal who derives his name from the black rod used as the mace of the Lords. His chief duties are to execute warrants of commitment, to desire attendance of Commons at the bar of the House when necessary, and to keep in custody persons detained for trial by the Lords; the *Sergeant-At-Arms* carries the mace when the Lord Chancellor enters and leaves the House; the *Clerk of Parliament* keeps the journals and judgments of the House.

Functions of the House of Lords; legislative function. The functions of the House of Lords are of two kinds, *viz.*, *Legislative* and *Judicial*. As a legislative chamber, the House of Lords possessed in the beginning the sole right to advise the King in law-making. It was not until 1322 that the consent of the Commons was deemed essential to legislation. Till the middle of the nineteenth century both Houses possessed equal legislative powers, in theory as well as in practice.

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[1] The term 'Woolsack' was, for the first time, used during the reign of Elizabeth I. It was then decided to stop the export of wool from England. The House of Lords then got its benches stuffed with wool to consume the wool produced at home. At present the Woolsack is really stuffed not with wool but with horse-hair.

But since 1861, the Lords have yielded to the Commons, as a rule, in the matter of legislation, particularly financial. When in 1909, the Lords obstructed the passing of the Finance Bill, called the Lloyd George Budget, the ministry of Mr. (late Lord) Asquith brought forward a bill to restrict the legislative power of the Lords. This was enacted into the Parliament Act, 1911; it curtailed very much the power of the Lords as a legislative body.[1] Though the House of Lords still participates in all legislation, *it is now merely a second chamber which may delay a legislation but not prevent it.*

Judicial function. The other function of the House of Lords is the *Judicial Function.* As a judicial body, the House exercises two kinds of jurisdiction, *viz.*, as a Court of First Instance, and as a Supreme Court of Appeal. As a Court of First Instance the House of Lords used to try till 1936 all peers who claimed the privilege to be tried by members of their own order but this jurisidiction is now abolished. Other instances of the House sitting as a Court of First Instance are : (*i*) *trial by impeachment*, as voted by the House of Commons; but it has now become obsolete; (*ii*) *trial by a Bill of Attainder* which is also now rare; (*iii*) trial of divorce cases of persons who have Irish domicile; (*iv*) cases involving claims of peerage or honour; (*v*) trial of persons guilty of breach of privileges; and (*vi*) deciding cases of disputed elections of Scottish and Irish peers. As the Supreme Court of Appeal, the House of Lords is the final court to hear appeals from the Courts of the United Kingdom, but these cases are ordinarily tried by Lords of Appeal-in-Ordinary and not by the Whole House. When the House sits as a judicial body to hear appeals, the Lord Chancellor who is one of the Lords of Appeal-in-Ordinary presides ex-officio. But as a Court of the First Instance the House is presided over by the Lord High Steward, appointed by Letters Patent under the Great Seal for each particular case.

The sessions of the House of Lords are regularly held on Tuesdays, Wednesdays, and Thursdays, and sometimes also on Mondays. Though the quorum to constitute a regular sitting is there, at least thirty members must be present to pass any bill, hence when bills come up to the Lords from the Commons, the sittings of the House of Lords are longer

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[1] The period of two years' delay in passing non-money bills, contained in the Parliament Act, 1911, was reduced to one year by the Parliament Act, 1949. The bill for this measure introduced in 1947 was held up by the Lords and became law in 1949 on the expiry of the two-year period.

and better attended.

Powers of Parliament

Sovereignty of Parliament. J. A. R. Marriot thus speaks of the importance of the British Parliament: 'From whatever point of view it be regarded, the English Legislature is the most interesting and the most important in the world. In point of antiquity incomparable; in jurisdiction the most extensive; and in power unlimited. Competent and at all times called upon to legislate for one-fourth of the human race, Parliament—or more technically 'the King in Parliament'—recognizes no domestic authority superior to itself. It is, in a word, 'Sovereign in all matters ecclesiastical as well as temporal, within the dominions of the King.' Such vast powers of a single legislature give to Parliament the Sovereignty unequalled by any other legislature. Dicey explains this Parliamentary Sovereignty by enunciating three propositions, *viz.*, (1) There is no law which Parliament cannot make; (2) There is no law which Parliament cannot repeal or modify; and (3) There is under the English Constitution no marked or clear distinction between laws which are not fundamental or constitutional and laws which are. The passing of the Statute of Westminster, while being an instance of the wide powers of Parliament on the one hand, has undoubtedly shortened the territorial sphere of parliamentary Sovereignty by recognizing the powers of the dominion parliaments to legislate for the territories under their jurisdiction any measure even though it conflicts with a Statute or Act of the British Parliament. Leaving, however, the self-governing dominions, all other parts of the British Empire are, even at the present time, subject to the full legal sovereignty of Parliament.[1] No court of law within the British Empire (outside, of course, the self-governing dominions) can question the validity of a law made by Parliament. This is, in brief, the nature of Parliamentary Sovereignty which is essentially *legal* for the *political sovereignty* still rests with the electorate in Britain.

The Real power lies with the Commons. The main function, therefore, of Parliament is the making of laws, financial as well as non-financial and to exercise control over the executive (the Cabinet) and

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[1] Since August 15, 1947, British Parliament has ceased to legislate for India (Bharat), Pakistan and later for Malaya and Ghana. Burma also has ceased to be a member of the Commonwealth.

general administration of the country. All laws are, in theory, made by 'King in Parliament,' but, in practice, since the democratisation of the House of Commons and yielding of all real power by the King to Parliament in return for the grant of Civil List and immunity from all responsibility for the administration, it is the House of Commons which controls legislation as well as the activities of the executive, much more so since 1911. Even before that year, the House of Lords generally yielded to the Commons on all important legislation. It was particularly in financial matters that the Commons exercised, in actual practice, the real power although the legal right of the Lords to suggest alterations in and exercise control over financial Bills was there. Erskine May very lucidly explained the exact relationship between the Crown, the Lords and the Commons in these words :

> The Crown demands money, the Commons grant it and the Lords assent to the grant ; but the Commons do not vote money unless it be required by the Crown ; nor impose or augment taxes unless they be necessary for meeting the supplies which they have voted or are about to vote, for supplying general deficiencies in the revenue : 'The Crown has no concern in the nature or distribution of the taxes, but the foundation of all Parliamentary taxation is its necessity for the public service as declared by the Crown through its constitutional advisers.'

Parliament Act, 1911, and relations between the two Houses. The constitutional crisis of 1909 over the Finance Bill between the two Houses led to the passing of the Parliament Act, 1911, under the Liberal ministry of Mr. Asquith who commanded a majority of 127 over the Opposition. Although the reform of the House of Lords, as promised in the preamble, has not yet been made the Act of 1911 defines the relations between the two Houses and thus puts an end to the uncertainty which ever enveloped the legislative competence of the Lords. Mr. Asquith, the Prime Minister, while moving for the first reading the Parliament Bill, dealing with the relations between the two Houses, on 21st February, 1911, thus spoke in the House of Commons : "Further, Mr. Speaker, in regard to their right of control over policy, over administration and over legislation, the legal relation of the two Houses, which have theoretically co-ordinate and co-equal powers, ceased to bear any relation to the actual fact. The House of Lords has long since ceased to have any real control over policy or administration. They debate such matters, and we read their debates with

interest and with profit, but their decisions are academic conclusions and have no direct influence....". And before concluding his speech he said: "The climax was reached in the autumn of 1909, when the House of Lords rejected the finance of the year. .....I do not think I am exaggerating in the least when I say that on that fatal day, fatal to the House of Lords, not to anybody else, of the 30th November, 1909, the House of Lords, as we have known it, as our fathers and forefathers have known it, committed political suicide. But doomed institutions, like threatened men, can last a long time....". And the House of Lords is still lasting, though with clipped wings and harmless voice. Due to its great importance, the Act of 1911 needs reproduction in full here.

PARLIAMENT ACT 1911
[1 & 2 Geo. 5, Ch. 13]

An Act to make provision with respect to the powers of the House of Lords in relation to those of the House of Commons and to limit the duration of Parliament.

[*18th August 1911*]

Whereas it is expedient that provision should be made for regulating the relations between the two Houses of Parliament:

And whereas it is intended to substitute for the House of Lords as it at present exists a Second Chamber constituted on a popular instead of hereditary basis but such substitution cannot be immediately brought into operation:

And whereas provision will require hereafter to be made by Parliament in a measure effecting such substitution for limiting and defining the powers of the new Second Chamber, but it is expedient to make such provision as in this Act appears for restricting the existing powers of the House of Lords:

Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. (1) If a Money Bill, having been passed by the House of Commons, and sent up to the House of Lords at least one month before the end of the session, is not passed by the House of Lords without amendment within one month after it is so sent up to that House, the Bill shall, unless the House of Commons direct to the contrary, be presented to His Majesty and become an 'Act of Parliament' on the Royal Assent being signified, notwithstanding that

the House of Lords have not consented to the Bill.

(2) A money Bill means a Public Bill which in the opinion of the Speaker of the House of Commons contains only provisions dealing with all or any of the following subjects, namely the imposition, repeal, remission, alteration or regulation of taxation : the imposition of the payment of debt or other financial purposes of charges on the Consolidated Fund, or on money provided by Parliament, or the variation or repeal of any such charges ; supply, the appropriation, receipt, custody, issue or audit of accounts of public money, the raising of guarantee of any loan or the repayment thereof, or subordinate matters incidental to those subjects or any of them. In this subsection the expressions 'taxation' and 'public money' and 'loan' respectively do not include any taxation, money, or loan raised by local authorities or bodies for local purposes.

(3) There shall be endorsed on every Money Bill when it is sent up to the House of Lords and when it is presented to His Majesty for assent the certificate of the Speaker of the House of Commons signed by him that it is a Money Bill. Before giving his certificate, the Speaker shall consult if practicable, two members to be appointed from the Chairman's Panel at the beginning of each session by the Committee of Selection.

2. (1) If any Public Bill (other than a Money Bill or a Bill containing any provision to extend the minimum duration of Parliament beyond five years) is passed by the House of Commons in three successive sessions (whether of the same Parliament or not), and having been sent up to the House of Lords at least one month before the end of the session, is rejected by the House of Lords in each of those sessions, that Bill shall, on its rejection for the third time by the House of Lords, unless the House of Commons direct to the contrary, be presented to His Majesty and become an Act of Parliament on the Royal Assent being signified thereto, notwithstanding that the House of Lords have not consented to the Bill ; Provided that this provision shall not take effect unless two years have elapsed between the date of the second reading in the first of those sessions of the Bill in the House of Commons and the date on which it passes the House of Commons in the third of those sessions.

(2) When a Bill is presented to His Majesty for assent in pursuance of the provisions of this section, there shall be endorsed on the Bill the certificate of the Speaker of the House of Commons signed by him that the provisions of this section have been duly complied with.

(3) A Bill shall be deemed to be rejected by the House

of Lords if it is not passed by the House of Lords either without amendment or with such amendments only as may be agreed to by both Houses.

(4) A Bill shall be deemed to be the same Bill as a former Bill sent up to the House of Lords in the preceding session if, when it is sent up to the House of Lords, it is identical with the former Bill or contains only such alterations as are certified by the Speaker of the House of Commons to be necessary owing to the time which has elapsed since the date of the former Bill, or to represent any amendments which have been made by the House of Lords in the former Bill in the preceding session and any amendments which are certified by the Speaker to have been made by the House of Lords in the third session and agreed to by the House of Commons shall be inserted in the Bill as presented for Royal Assent in pursuance of this section.

Provided that the House of Commons may, if they think fit, on the passage of such a Bill through the House in the second or third session, suggest any further amendments without inserting the amendments in the Bill, and any such suggested amendments shall be considered by the House of Lords, and, if agreed to by that House shall be treated as amendments made by the House of Lords and agreed to by the House of Commons: but the exercise of this power by the House of Commons shall not affect the operation of this section in the event of the Bill being rejected by the House of Lords.

3. Any certificate of the Speaker of the House of Commons given under this Act shall be conclusive for all purposes and shall not be questioned in any court of law.

4. (*i*) In every Bill presented to His Majesty under the preceding provisions of this Act the words of enactment shall be as follows, that is to say:

'Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Commons in this present Parliament assembled in accordance with the provisions of the Parliament Act, 1911 and by the authority of the same as follows:

(*ii*) Any alteration of a Bill necessary to give effect to this section shall not be deemed to be an amendment of the Bill.

5. In this Act the expression 'Public Bill' does not include any Bill for confirming a Provisional Order.

6. Nothing in this Act shall diminish or qualify the existing rights and privileges of the House of Commons.

7. Five years shall be substituted for seven years as the time fixed for the maximum duration of Parliament under the Septennial Act, 1715.

8. This Act may be cited as the Parliament Act, 1911.

Thus the Parliament Act, 1911, makes the following constitutional changes respecting the powers and relations of the two Houses :

The Act deprives the House of Lords of all power over Money Bills which become law, at the latest, thirty days after passage by the Commons and despite non-approval by the Lords ; fully empowers the Speaker of the House of Commons to decide what is, or what is not, a Money Bill and his decision cannot be questioned by a court of law ; limits the power of the House of Lords over all other Public Bills (not being Money Bills) to exercising a suspensive veto of two years ;[1] gives the Commons unrestrained power over general legislation, except the powers to extend their own term beyond the statutory term of five years as fixed by the Act itself.

Legislative Procedure

When a new House of Commons meets for the first time in its own chamber, it waits for a few minutes till the official messenger (under order from the Lord Chancellor) appears with the Black Rod and invites the Commoners to come across the hall and then the Commoners, headed by the Clerk of the House, walk through the great corridor to the House of Lords. This done, the Lord Chancellor announces "His Majesty's pleasure is that you proceed to the choice of some discreet and learned person to be your Speaker". The Commoners then silently walk back to the House of Commons and elect the Speaker. Then a second call comes from the Lord Chancellor to hear the speech from the throne. The Commoners then, headed by the Sergeant at Arms, go to the Lords and hear the speech from the throne delivered by the monarch in person (in case the new Parliament is opened by the monarch) or by some person designated for the purpose by the monarch. Thereafter the Commoners go back to their House and begin their proceedings.

Importance of law. The British Parliament passes a large number of Acts every year not only for the United Kingdom of Great Britain and Northern Ireland but also for the British possessions beyond the seas. The process of law-making is practically the same for all these laws, the beauty of which is thus described by Sir A. Helps: 'You chuckled over those people who could see beauty only in pictures,

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[1] This period has been reduced from two years to one year by Parliament Act, 1949.

but you cannot imagine the beauty of an intricate, mazy law process, embodying the doubts and subtleties of generations of men. I say, looked at in that way there is something picturesque in an Act of Parliament.' Rousseau is, perhaps, too strong in his condemnation of laws when he says : 'The universal spirit of the laws of all countries is to put always the strong against the weak, and him who has against him who has nothing. The disadvantage is inevitable and it is without exception.' C. Macklin too thinks similarly : 'The law is a hocus-pocus science that smiles in yer face while it picks yer pocket ; and the glorious uncertainty of it is mair use to the professors than the justice of it.' On the other hand, the following two opinions speak in praise of laws:

Law does not put the least restraint
Upon our freedom, but maintain't
For wholesome laws preserve us free
By stinting of our liberty.—(S. BUTLER).

Or again,

'That sounds like nonsense, my dear.'
'May be so, my dear, but it may be very good law for all that.'

The law as made by Parliament reflects the general opinion of the nation on some subject of public interest. It is passed after a long process has been gone through, and although Burnet's opinion may not be entirely incorrect that 'The law of England is the greatest grievance of the nation, very expensive and dilatory,' it is all the same necessary for regulating the life of the citizen as well as of the community.

Distinction between a Bill and an Act. We now take up the description of the process of law-making as it exists in the British Parliament. It is, at first, necessary to understand the difference between a Bill and an Act or law. A Bill is the document or draft which contains the proposal in its complete form of the law that is intended to be made. It is first introduced into Parliament, in either House, except that Money Bills must originate in the Commons and Bills relating to privileges and rights of peers must originate in the Lords. When a Bill has passed through the various stages in the two Houses and has received the Royal assent, it becomes an Act or law of Parliament.

Kinds of Bills. Bills are of two kinds, *viz.*, Public Bills and Private Bills. A *Public Bill* is one that deals with a matter of public interest and thus affects either the whole community or a very large part of it. A

Private Bill is that which concerns only an individual, or, group of individuals, or a particular body or corporation. Here it must be noted that a Private Bill is not the same thing as a *Private Member's Bill*; the latter is a Bill introduced by a private member of Parliament and not by the Government or any of its officials. Thus a Private Member's Bill may be a Public Bill (if it deals with some subject affecting the public) or it may be a Private Bill if it relates only to a particular locality or body. Parliament devotes most of its time to Government Bills which are introduced by members of Government, and private members are entitled to criticise these measures or purpose amendments thereto. Private Member's Bills have very little chance of being passed into law unless they are backed by Government, and it is only on rare occasions that Government do it. Whenever a ministry finds that some Private Member's Bills are really useful, it itself proposes, later on, legislation on those lines.

The work of an ordinary M. P. It is thus seen that in the British Parliament the work of private members generally remains confined to the criticising of Government measures and policy or to questioning the Government on matters of general or particular interest. The quorum for a valid sitting of the House of Commons is forty. Rules and standing orders of the House are permanent but can be suspended to expedite business; this power has not been abused. Each day there is the question hour which is interesting as the supplementaries are put and Government sometimes 'heckled' on policy matters. Every member is entitled to put questions to the Cabinet or any members thereof in order to get information. Ministers are bound to answer a private member's questions and supply information unless it is not in the public interest to divulge any confidential matters. A member may also bring forward a motion of censure against the Government and if such a measure is passed the Government, *i. e.*, the Cabinet, resigns. Parliament is generally busy in carrying out the legislative programme of the Government of the day.

Notice of a Bill. The first stage in the life of a bill is its drafting. Government bills are drafted by a Parliamentary Counsel to the Treasury. A Private Member's Bill may be drafted by the member himself or by some person employed by the member for the purpose; in either case it must bear the member's name on its back. When a private member has obtained leave for a bill, he takes the draft to the Public Bill Office and fills up a form for presenting the bill to the House. In the House he goes to the bar when the Speaker calls him by name and

the member answers, "A bill, Sir". It is then given to the Clerk of the House who reads the short title of the bill aloud, and then it is considered to have been received by the House.

First Reading of a Bill. The next stage is the *first reading* of the bill. A Government bill is introduced by a minister who explains at length the nature of the bill, and his speech is followed by a debate and a vote. But the first reading of a bill in all other cases is usually only a formality, the real debate being reserved to a later stage. A private member circulates printed copies of his bill, fills up the form for introducing the bill, and on being called by the Speaker, takes it to the table where the Clerk reads its short title; and thus ends the first reading.

Second Reading stage of the Bill. The bill then enters upon the next stage, called the *Second Reading*, when an opportunity is afforded for discussion of its principles and details (if it is a public bill), or if it is a private bill, for indication that it does not contain any obviously objectionable features. But if at this stage the bill is to be courteously dismissed, an amendment is moved to the question 'That the bill be *now* read a second time,' to replace the word 'now' by 'three months' or some such period beyond the probable duration of the session. If the amendment is accepted, it is tantamount to a rejection of the bill. Most private members' bills meet this fate. But a bill that survives second reading goes to a *Committee*. Every money bill, or any non-money bill if so directed by the House, goes to the Committee of the Whole ;[1] otherwise it goes to one of the Standing Committees if it is a Public Bill, or to a Private Bill Committee if it is a Private Bill. In some cases, a bill may first go to a Select Committee before going to a Committee of the Whole or a Standing Committee. In the committee stage the bill is thoroughly discussed, clause by clause, and amendments may be made in the Committee of the Whole House to perfect the measure and free it from defects.

The Report stages of the Bill. After the Bill has passed through the committee stage, it goes to the House, and this is called the *report stage*. The House examines the bill in detail, clause by clause, amending it wherever found necessary. Sometimes a bill may be again referred to a committee.

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[1] The Committee of the Whole means the whole house sitting, but in place of the Speaker, some other person elected as chairman presides, and the rules of procedure and discussion are suspended.

Third Reading stage of the Bill. The bill then enters upon the next stage, the *third reading*, in the form in which it has emerged from the second reading. In the third reading, the debate is on the matters contained in the bill. If in this stage any amendments, other than verbal ones, are made, it is recommitted to the committee concerned for re-examination of the measure. But such occasions are rare and most bills after the third reading stage are passed by the House. After the House has passed the bill as a result of voting at the end of the third reading, it is sent to the other House where it has to go practically through the same stages (except that in the Lords there are only two stages or readings for bills received from the Commons) as in the originating House. When the other House has passed the measure without amendment, it is sent to the King for Royal assent on receiving which it becomes an Act. The king's assent is a formal matter as he acts on the advice of the Cabinet.

If, however, the other House proposes amendments to the bill, it is sent back to the originating House and if the latter accepts the amendments, it is sent to the King for Royal assent.

Procedure regarding Money Bills. The procedure regarding the Money Bills is a bit different, in this case, the executive prepares the estimates concerning expenditure on Supply Services, which have to require Parliamentary sanction every year. But expenditure on Consolidated Fund Service are sanctioned by Permanent Acts. A few principles have to be observed: (1) Every bill entailing a charge on the public revenues must emanate from the Crown, *i.e.*, the Cabinet, that is to say, no private member can bring forward such a bill; (2) every such bill must be in the form of an estimate; (3) it must originate in the House of Commons. this practice dates from 1678 when the Commons resolved 'that all aids and supplies and aids to His Majesty in Parliament, are the sole gift of the Commons, and all bills for the granting of any such aids and supplies ought to begin with the Commons'.

The demand by the Crown for supplies for the next financial year is made in a speech from the Throne. The Chancellor of the Exchequer introduces, in due course, in his budget speech, all the demands. These are discussed either in the Committee of Supply or the Committee of Ways and Means, both of which are committees of the Whole House. In the committee, no private member can move an increase in expenditure, but if an increase is desired on some particular item it is done by moving a cut in the salary of the minister responsible

for the estimate. The Committee of Supply determines what monies should be granted to the Crown, while the Committee of Ways and Means determines from what sources the required money is to come. All proposals for new taxation are included in the Finance Bill which, when passed into law, is called the Finance Act.

All money bills have to pass through all the stages as described above for general bills, the only difference being that under Parliament Act 1911, if a money bill is sent to the Lords at least a month before the end of the session and is not passed by the latter, it is presented to the Crown for Royal assent and when it has been signified, the bill becomes an Act. Every such bill must be certified by the Speaker of the Commons that it is a money bill. The Lords have now reconciled themselves to this constitutional restriction and they now no longer obstruct or delay the passing of a money bill.

Differences between the two Houses; how solved. It is thus seen that, since 1911, the Commons control the legislation. In case of differences between the two Houses on any bill, what the Parliament Act 1911, has provided to solve them is that if, in case of a money bill, the Lords fail to pass it within a month of its presentation, in the form recommended by the Commons it becomes law on receiving the Royal assent; but if it is a bill other than a money bill and the Commons do not agree to the amendment or amendments proposed by the Lords, and pass it three times in the same or different sessions and one year has elapsed between the date of its second reading in the first of those sessions in the Commons and the date of its third passage, the bill as finally passed by the Commons is submitted to the Crown for Royal assent on receiving which it becomes an Act.[1]

It must in this connection be observed that Royal assent is now a mere formality as it has never been refused since 1707. If the Crown is opposed to a particular measure, it may dissuade the ministry from introducing it, or dismiss the ministry and appoint a new one, or dissolve Parliament and appeal to the nation. The Royal assent to a bill may be given by the King coming to Parliament to signify it, or it may be given by a commission under the Royal Sign Manual and the Great Seal. The last time when Royal assent was refused was in 1707 when the Scotch Militia Bill was rejected by the Crown.

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[1] One year has been substituted for two years (as prescribed by the Act of 1911) by an amendment made in 1949.

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8

THE EXECUTIVE: KING AND CABINET

Every noble Crown is and on earth will forever be, a Crown of thorns.

—CARLYLE

* * *

The cabinet lives and acts simply by understanding, without a single line of written law or constitution to determine its relations to the monarch, or to parliament, or to the nation; or the relations of its members to one another, or to their head.

—WILLIAM E. GLADSTONE

The King

British Monarchy without a parallel. In theory the Government of the United Kingdom is an absolute monarchy; every law must be signed by the King, the ministers are his ministers, and the courts of law are his courts of justice; but in form, it is a limited monarchy inasmuch as no act of the King is lawful unless countersigned by a minister, and the King always accepts the advice of his Cabinet; in actual working, it is a democratic republic, the King is little more than a 'rubber stamp, his activities in the political field have become confined to 'advice, encouragement and warning' and it is the representatives of the people (ultimately, therefore, the electorate) who make laws, decide the fate of ministries and the policy of administration. The British monarchy is thus without a parallel in the history of the world.

In the Anglo-Saxon times the King was absolute; though he made laws 'with the counsel and consent of the *wise*'. It was in 1215, that the barons and the clergy forced King John to sign the Magna Carta, the first document of English liberties. Thereafter the drift toward constitutional monarchy began, intercepted now and then by attempts of the individual sovereigns to regain absolutism. The Stuart Kings reasserted the King's right to rule as he pleased, and advanced the divine right theory of Kingship. This led to a long

drawn out contest between the kings and their parliaments, which ultimately resulted in the victory of the latter, though not without two revolutions, in 1649 and 1688. That even while the people's representatives were struggling for transference of power from the King to Parliament, there was no attempt to underrate the importance of the King may be seen from the following advice Bacon tendered to James :

> "Look on a Parliament as a certain necessity, but not only as a necessity, as also a unique and most precious means for uniting the Crown with the Nation, and providing to the world outside how Englishmen love and honour their King, and their King trusts his subjects. Deal with it frankly and nobly as becomes a King, not suspiciously like a huckster in a bargain. Do not be afraid of Parliament. Be skilful in calling it, but do not attempt to 'pack' it. Use all due adroitness and knowledge of human nature, and necessary firmness and majesty, in managing it; keep unruly and mischievous people in their place; but do not be too anxious to meddle, 'let nature work'; and above all, though of course you want money from it, do not let that appear as the chief or real cause of calling it. Take the lead in legislation. Be ready with some interesting or imposing points of reform or policy, about which you ask your Parliament to take counsel with you. Take care to frame and have ready some commonwealth bills, that may add respect to the King's movement, and acknowledgment of his care; not *wooing* bills to make the King and his graces cheap; but good matters to set the Parliament on work, that an empty stomach do not feed on humour."

Hereditary Monarchy. What the sovereigns did not willingly grant was wrested by Parliament, partly in 1649 and partly in 1688, has already been shown in chapter fourth. The Bill of Rights (1689) and the Act of Settlement (1701) now regulate the limitations on powers of the King and the succession to the throne.[1] The Crown now devolves upon the eldest son when a vacancy occurs, but if the eldest son is not alive, his issue, male or female, succeeds, and failing that the succession devolves upon the second son or his issue; thus the monarchy is hereditary, and the throne is never vacant. The legal maxim 'The King is dead, long live the King' connotes that though a

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[1] See ante ch. 4.

particular King is dead, the throne is not vacant, the next successor, according to law, is there on it. And this succession is automatic as may be seen from the declaration of King Edward VIII made in the Privy Council, soon after King George V's death. The new King said: "After the irreparable loss which the British Common-wealth of Nations has sustained by the death of His Majesty, my beloved father, has devolved upon me the duty of sovereignty. I know how much you and all my subjects, with, I hope I may say, the whole world feel for me in my sorrow, and I am confident of the affectionate sympathy which will be extended to my dear mother in her overpowering grief."

Promise to uphold constitutional government. "When my father stood here 26 years ago, he declared that one of the objects in his life would be to uphold constitutional government. Therein I am determined to follow my father's footsteps and work, as he did throughout his life, for the welfare and happiness of my subjects. I place my reliance upon the affection of my people throughout the Empire and upon the wisdom of their Parliaments to support me in this heavy task, and I pray that God will guide me to perform it."

The next day, the following Proclamation was delivered from the balcony of St. James' Palace:

"Whereas it pleased Almighty God to call to His mercy our late Sovereign Lord, King George V of blessed and glorious memory by whose decease the Imperial Crown of Great Britain and Ireland is solely and rightfully come to the High and Mighty Prince Edward Albert Christian George Andrew Patrick David, we therefore, Lords Spiritual and Temporal of this realm being here assisted with those of his late Majesty's Privy Council, with numbers of other principal gentlemen of quality with the Lord Mayor, the Aldermen and Citizens of London, do now hereby and with one voice and consent of tongue and heart publish and proclaim that the High and Mighty Prince Edward Albert Christian George Andrew Patrick David is now, by the death of our late Sovereign of happy memory, become our only lawful and rightful liege King Edward VIII by the Grace of God of Great Britain and Ireland and British Dominions beyond the seas, King and defender of the Faith, Emperor of India.

"Whereto we acknowledge all faith and constant obedience with all hearty and humble affection. Beseeching God, through whom Kings and Queens do reign, to bless the Royal King Edward VIII with long and happy years to reign over us."

But in December, 1936, Edward VIII abdicated as he found it difficult to bear the responsibility of the "heavy task" without having

by his side the woman he loved (Mrs. Simpson) whom he subsequently married.

The King is the nominal executive. From the wording of this proclamation and the oath, which every King of England has to take at the time of Coronation, the inference is clear that British monarchy, though hereditary, is really constitutional and bound by definite limitations and restrictions. The King *does not rule* but *only reigns* over his subjects. The glory and charm attaching to the present monarchy are as great as they were ever before, and even more, but the real power lies elsewhere (in the cabinet); the monarchy thus forms what may be termed the formal or nominal executive in the United Kingdom, for, as will be presently shown, all powers in the name of the King are exercised by the Ministers responsible to Parliament.

Income of the King compared with other Heads of States. In return for this transference of real powers to the Cabinet by the King, the latter enjoys immunity from all responsibility of administration. He does not interfere with the work of Parliament, and in return Parliament votes him annually a huge Civil List which enables him to live in right royal style. George VI got an annunity of £410,000, besides the revenues of the Duchy of Lancaster, the latter amounting to nearly halfa million pounds. His additional income from the Duchy of Cornwall was nearly a hundred thousand pounds, out of which a sum of £16,000 went to Princess Elizabeth and the Duke of Gloucester. Other members of the royal family got an annuity amounting to nearly £170,000. Thus a total sum of £650,000 a year was the Civil List of the royal family. In contrast with this, the Danish King has an income of £50,000, the Queen of Holland and the King of Italy each £125,000, the King of Sweden and Norway £85,000 and £35,000 respectively. The French President and the American President get, as salary, £45,000 and £20,000 respectively, in addition to allowances. The King of England has also got huge private fortune coming down from Queen Victoria; he can own and dispose of property like any other citizen.

The King can do no Wrong

English Monarchy in law and in fact. In law, the English King is as supreme to-day as he was at the close of the sixteenth century. His legal powers remain uncurtailed. He is still the supreme executive authority; the King in Parliament continues to be the final legislative

authority; he is still the *fountain* of 'justice' and of 'honour'; he continues to be the Head of the Church; he still holds supreme command of all the military forces of the realm, land, naval and air; he embodies in his person the dignity and unity of the State and the Empire.

The legal powers. The powers the Sovereign could exercise without consulting Parliament were summarised by Bagehot during the reign of Queen Victoria thus: 'The Queen could disband the army; she could dismiss all the officers, from the General Commanding-in-Chief downwards; she could dismiss all the sailors too; she could sell off all our ships of war and all our naval stores; she could make a peace by the sacrifice of Cornwall, and begin a war for the conquest of Britanny. She could make every citizen in the United Kingdom, male or female, a peer. She could make every parish in the United Kingdom a 'university'; she could dismiss most of the civil servants; she could pardon all offenders. In a word, the Queen could by prerogative upset all the action of civil government within the Government, could disgrace the nation by a bad war or peace, and could by disbanding our forces, whether land or sea, leave us defenceless against foreign nations."[1] These are the vast legal powers which the Queen of England can exercise even today. But in fact the real power had already passed from the sovereign to Parliament much earlier than the ascension of Victoria to the throne. This was made clear by Lord Erskine in his speech in the House of Lords on 13th April, 1807. He said: "The King can perform no act of government himself, and no man ought to be received within the walls of this House to declare that any act of government has proceeded from the private will and determination, or conscience of the King. The King, as chief magistrate, can have no conscience which is not the trust of responsible subjects. .....The fame and honour of his actions are his own; but, as all men must have errors, the wisdom of our government turns them aside from him. The maxim that the King can do no wrong, does not seek to alter the nature and constitution of things, but to preserve the government not only against the impeachment of crime, but even against the irreverence and loss of dignity arising from the imputation of it. No act of state or government can, therefore, be the King's; he cannot act but by advice; and he who holds office sanctions what is done, from whatever source it may proceed."

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[1] Bagehot, *English Constitution*, p. XXXVI
Marriot, *English Political Institution*, p. 50.

Actual powers of the King are limited. In practice, however, there is a great difference. No executive act of the King is effective unless countersigned by a Minister who then becomes responsible for the act. The King must accept the advice of his Ministers; though this has been achieved by convention, it has become so important and an integral part of the English constitutional law that in 1936, King Edward VIII felt compelled to renounce the throne because his Ministers advised him to give up his idea of marrying 'the woman he loved.' The King had to abdicate.[1]

Prerogative of the King is now conditioned. The dismissal of executive or civil servants too, as exercised under royal prerogative, is similarly conditioned. Halsbury defined prerogative as 'that pre-eminence which Sovereign enjoys over and above all other persons by virtue of the common law, but out of its ordinary course, in right of his regal dignity, and comprehends all the special dignities, liberties, privileges, power and royalties allowed by common law to the Crown of England.' But even when these prerogatives are exercised, the courts have the jurisdiction to enquire into the existence of any prerogative for it was settled in 1610 that "the King has no prerogative except which the law of the land allows him and he cannot change any common law, statute law, or custom by proclamation." The restrictions on the King's prerogatives, whether in the legislative or executive or judicial field, have been placed partly by means of agreements between the King and the people, partly by means of prohibitive legislation, and partly by disuse. Thus, it is the King's prerogative to make law, but Royal assent to law passed by Parliament has not been refused since 1707. The King, in the exercise of his prerogative, can create any number of peers; King William IV granted such permission to Earl Grey in these words: "The King grants permission to Earl Grey and to his Chancellor, Lord Brougham, to create such a number of peers as will be sufficient to ensure the passing of the Reform Bill, first calling up peers' eldest sons, William R. Windsor, May 17, 1832." But the King cannot exercise this right indiscri-

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[1] The Instrument of Abdication was drawn up in these words: "I, Edward VIII of Great Britain, Ireland and the British Dominions beyond the Seas, King, Emperor of India, do hereby declare my irrevocable determination to renounce the Throne myself and for my descendants and my desire that effect should be given to this Instrument of Abdication immediately. In token whereof I have hereunto set my hand this tenth day of December 1936, in the presence of the witnesses whose signatures are subscribed. Edward R. I."

minately; Lord Lyndhurst once made this abundantly clear:

> "It does not follow that this or any other exercise of the Prerogative merely because it is strictly legal, is therefore consistent with the principle of the constitution. The Sovereign may, by his Prerogative, if it should be thought proper, create 100 peers with descendible qualities in the course of a single day, and this would be strictly legal; but everybody must feel and know that such an exercise of the Prerogative of the Crown would be a flagrant violation of the principles of the Constitution."

During their ministries, the two great Prime Ministers, Lloyd George and Asquith, liberally created peers by giving advice to the King. Peers are, therefore, now created by the sovereign on the advice of the Cabinet, and not otherwise. All other prerogatives and powers of the Crown are similarly exercised. Since the Revolution of 1688, the position of the Crown is summed up in the phrase, 'the Crown was made, the Crown was limited, the Crown was paid.'

The Crown and the judiciary. The powers of the Crown in regard to justice may be thus explained. It is the fountain of justice; the courts are His Majesty's Courts of Justice. But the King does not, and cannot, interfere in the administration of justice, including prosecution, trial, sentence, etc. The judges, though appointed and dismissed in his name, are really appointed by the Ministers and removed by them generally on an address by both Houses of Parliament. True, the prerogative of mercy is still his, but it is exercised by the Home Secretary; the Crown, however, has a right to be kept informed of the thing to which it is expected to append its signature. The responsibility is the Minister's.

The Crown and legislative powers. The King opens and dissolves Parliament, but it is not his sole discretion as to how and when the power is to be exercised. Conventions limit this power. Parliament must be convened year after year to vote supplies and pass the Army Act. The Parliament Act, 1911, limits the life of the Commons. Parliament controls its own procedure. In exercising the power of granting dissolution of Parliament, he has to act according to the will of the nation. The exact constitutional position was explained by the late Earl of Oxford and Asquith in a speech to Liberal M. P.'s December 18, 1923, thus: "The dissolution of Parliament is in this country one of the prerogatives of the Crown. It is not a mere feudal survival,

but it is a part, and I think a useful part, of our constitutional system, for which there is no counterpart in any other country, such, for instance, as the United States of America. *It does not mean that the Crown should act arbitrarily and without the advice of responsible Ministers,* but it does mean that the Crown is not bound to take the advice of a particular Minister to put its subjects to the tumult of a series of general election so long as it can find other Ministers who are prepared to give it a trial. "The Crown grants a dissolution asked for only when there is good reason to suppose that the House of Commons has ceased to represent the opinion of the country. The Crown can communicate to Parliament only by speech from the throne at the opening or close of a session or by message. The ceremonies of opening, proroguing or dissolving Parliament are the only occasions when the King is present in the House of Lords where Commons are required to attend. But all speeches and messages of the King are prepared by the Cabinet of the day and contain the policy of the latter. The King cannot be present during debates in Parliament ; and though all laws are enacted by the 'King in Parliament,' it is really Parliament, and more particularly, the House of Commons that makes laws, the Lords cannot interfere, and much less can the King. The King possesses, in theory, the right to veto a measure passed by Parliament, but in actual practice he cannot do so ; he acts on the advice of his ministers. Even the royal Proclamations issued for the administration of newly conquered countries and Orders-in-Council relating to the government of Crown Colonies, though issued by the King-in-Privy-Council, are, in fact, prepared by responsible Ministers.

All this does not, however, mean that King's influence in legislation is absolutely nil. Due to his experience with different Ministries and Cabinets he is sometimes able to dissuade Ministers from a certain course of action, particularly before a legislative measure is actually introduced ; he does not, however, refuse Royal assent to a measure passed by Parliament. But he is above law, which means that he cannot by any process known to English constitutional law be made to appear before a court of law and held accountable for any measure or act. The responsibility is that of his Ministers.

The Crown and executive powers. As head of the state the King is the chief magistrate, the head of the government. But, in actual practice, the Cabinet is the real executive. He appoints the Prime Minister (the chief of the Cabinet), and on the latter's recommendation other Ministers. The Ministers are, in reality appointed

by the House of Commons, for in making his choice of the Prime Minister, the King appoints the leader likely to command the confidence of a majority in the Commons. The Ministers are the King's Ministers and advisers, but in practice, their responsibility is to the Commons, *i. e.*, to the representatives of the people. It is not constitutional for the Crown to turn out at its will a Ministry. Even in foreign affairs, though the Crown accredits British ambassadors for foreign countries, and receives foreign ambassadors, at the British Court, it is the Ministry that is really responsible for appointments. During the reigns of Queen Victoria and Edward VII, no doubt, the Crown's influence in foreign policy was great and these sovereigns did intervene in important matters and on occasions exercised powerful influence in establishing relations with foreign states, but this was due more to the personal abilities of these sovereigns than to their legal powers.

Crown and King distinguished. It is sometimes difficult for students of English constitutional history to understand clearly the distinction between 'Crown' and 'King'. The 'Crown' is an institution which never dies, the 'King' is the individual who holds the institution. There may be a demise of the King but not of the Crown. The Crown is the symbol of imperial unity; it is the golden link that connects the various parts of the British Empire; the allegiance of the people is to the Crown. The King occupies a very dignified position in social life as an individual. The King may personally be ignorant of many acts that are done in the name of the Crown. The Crown is the supreme executive authority, and its powers are exercised by the King as advised by his Ministers. The prestige of the Crown is surrounded by 'the elements of mystic magnificence which reside in its long history and hereditary situation. . its position does make it a force—a force which can be overcome by a man of strong character, but to which a man of some generosity and perhaps some weakness. . may succumb.' The exact position and influence of the Crown may be summarised thus: the Crown has the right to be kept informed of the political situation, at home as well as abroad; as its signature is necessary for all statutes and many official documents, it can raise objections, offer suggestions to persuade or dissuade, and sometime to make concessions, but not to finally obstruct the course of administration. Formerly, the Ministers used to advise the King, but at present the position, in practice, seems to have been reversed, for it is the King who now advises the Ministers, and a powerful King can sometimes do it effectively.

Why is monarchy retained? Most students of British constitution who study the theory and practice of Kingship in England ask themselves: If the King does not exercise any power and if the Cabinet is the real executive why retain monarchy? In answer it may be said that though Great Britain is to all intents and purposes a republic, monarchy does not hinder the working of the democratic system. Englishmen are, by nature, conservative and would not clamour for the abolition of an institution with a long history behind it when it does not interfere with their rights. Kingship is held in high esteem for the glory surrounding it. The monarchy is useful as the link between the various parts of the British Empire. The King is the symbol of the unity of the Commonwealth of which he has been acknowledged by all the members (including the self-governing Dominions and the Republics of India and Pakistan) as its head. The monarch as head of the British society exercises dominant influence on the manners, tastes, art, literature and education of the people. Of late there has been freer contact between the monarchy and the people. No useful purpose will, therefore, be served by abolishing monarchy. In the words of Prof. Munro: "The British people have come to realise that the monarchy, seated above the turmoil of personal and partisan strife, neutral in politics, and with no ambitions to gratify, lending dignity to government but not standing in the path of the public will—they have come to recognise that whatever may be the causes of their varied troubles, the monarch is not one of them." The monarch is now being looked upon as the essential "motive power of the ship of state, it is the spar upon which the sail is bent. . ."[1] They no longer fear the recurrence of the events of the seventeenth and eighteenth centuries.

The Cabinet

The real executive in England is the Cabinet which is responsible for the administration of the United Kingdom and the British possessions (excluding the self-governing dominions) beyond the seas. The King's government must be carried on, and so when one Cabinet falls another is formed in its place. A. V. Dicey thus speaks of the Cabinet: "While every act of state is done in the name of the Crown, the real executive Government of England is the Cabinet. . No one really

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[1] *The Governments of Europe* (4th Edition), p. 66.

supposes that there is not a sphere, though a vaguely defined sphere, in which the personal will of the Queen has under the Constitution very considerable influence." W. E. Gladstone spoke of the position of the Cabinet *vis-a-vis* the other institutions in these words:

> "The Cabinet is the threefold hinge that connects together for action the British Constitution of King or Queen, Lords and Commons. . Like a stout buffer-spring, it receives all shocks, and within it their opposing elements neutralize one another. It is perhaps the most curious formation in the political world of modern times, not for its dignity, but for its subtlety, its elasticity, its many-sided diversity of power. . It lives and acts simply by understanding, without a single line of written law or constitution to determine its relations to the Monarch, or to Parliament, or to the nation; or the relations of its members to one another, or to their head."

Three councils of the Crown. The Cabinet is, therefore, one of the most curious outgrowths of English political customs, conventions and usages. It is at present one of the three great councils of the Crown, the other two being the House of Lords and the Privy Council. We have already described the growth, composition, and functions of the House of Lords. To understand the exact functions of the present-day Cabinet, it is necessary to distinguish it from the Privy Council.

Early history of Curia. Formerly, particularly during the Norman rule, the *Curia* was a permanent body of the King's advisers and administrators, which performed judicial, financial, executive and consultative functions. As time passed on and the work of the *Curia* increased, the judicial functions came to be transacted by two Courts (King's Bench and Common Pleas), while the financial business was entrusted to the Exchequer. The remaining functions of advising and acting with the King, in matters of general administration, were performed by the *Continual Council*. This body became particularly prominent during the reign of Henry VII when its members were chosen, or rechosen every year, paid salary for the work done, and were bound to attend its meeting. Its functions covered the whole of the executive action and, therefore, it became the executive organ of the government.

Curia becomes Privy Council. It was during the reign of Edward VI that it came to be called the *Privy Council*. Later on, under the Tudors it was often divided into committees for the transaction of

business. Its membership varied with each reign, thus it was 11 in the year 1509, 25 in 1547, 46 in the time of Mary, but only 13 under Elizabeth. The representatives of the people (the House of Commons) controlled it by voting impeachment of its individual members. In 1833, the Judicial Committee of the Privy Council was created by a statute; similarly, at different periods the Board of Education, the Local Government Board and other departments were separately formed.

Origin of the Cabinet. During the reign of Edward VI, one of the committees of the Privy Council was entrusted with the transaction of important business, and was, therefore, called the Committee of State. Charles II created in 1667 a body of trusted counsellors, called the 'Cabal', for consultation and advice.[1] This committee, later known as the cabinet, determined the policy of administration, which was formally approved by the Privy Council (to express the Royal will) and carried out by the various departments of administration. The 'Cabal' system became unpopular in the time of William III; therefore the Act of Settlement provided that the Privy Council itself should decide all questions and the final decisions should be signed by all the members present. It also disqualified all persons holding salaried posts under the Crown from membership of Parliament. These provisions were, however, repealed during the reign of Queen Anne.

Cabinet under the Hanoverians. With the accession of George I, the first Hanoverian King of England, an important change took place in the composition and working of the Cabinet. George I appointed as his ministers the important leaders of the Whig Party. As he did not know English, he did not attend the Cabinet meetings; thus the King lost all initiative and control in the discussion and settlement of the policy of administration. His place was taken up by the Prime Minister. It was during the reign of George II that the Cabinet System was definitely worked out and established by Sir Robert Walpole in 1721. To Walpole goes the credit of laying the foundation of the cabinet system. He as the chief minister demanded loyalty of his colleagues and insisted on his cabinet presenting a united front to Parliament. He became the First Lord of the Treasury and the Chancellor of the Exchequer. Determined to keep the initiative in his hands, he directed the policy of administration, ensured unity of action, and enforced common responsibility. In 1730, Walpole compelled his colleague

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[1] 'Cabal' was derived from the first letters of the names of the five advisers, namely, Clifford, Arlington, Buckingham, Ashley and Lauderdale.

Townsend to resign as the latter differed from the former's policy. Similarly Chesterfield was dismissed for opposing the Excise Bill in 1733. But in 1742 Walpole resigned on being defeated in the House of Commons. In this way he established two principles: (*i*) responsibility of the prime minister for laying down the main policy, and (*ii*) responsibility of the cabinet to the House of Commons in place of responsibility to the King. George III disliked it and tried to destroy it with the help of the Tories. After the disastrous loss of the American colonies, personal government disappeared and the Tory Party under Pitt became as loyal to the Cabinet and party system as the Whigs. Queen Victoria loyally accepted the system after some wavering and this firmly placed the throne on a basis of popular control.

Formation of the Cabinet. The Cabinet is now the driving force of the administration. It is continued on this principle that the King's Government must be carried on, so that when one Cabinet falls another is formed by the Prime Minister at the invitation of the King. The King sends for the leader of the party that is most likely to command a majority in Parliament, *i. e.*, in the House of Commons, and appoints him Prime Minister, inviting him to form the Cabinet. George V preferred Mr. Baldwin over Lord Curzon in 1923, for the office of the Prime Minister, establishing the practice that the Prime Minister must be a Commoner. He must lead the House of Commons which holds the purse strings and makes and unmakes ministries. Under normal conditions, the Prime Minister so appointed usually consults the most important members of his party regarding the selection of Cabinet members. He then submits the final list to the King who formally approves it, and the Cabinet's personnel is then announced in the Gazette. Under abnormal circumstances a Coalition Cabinet is formed, including leading members of different political parties.

The King's influence. Although the Prime Minister is free to choose his colleagues, the King exercises some kind of influence in the selection of the ministers in three ways, *viz.*, (*i*) suggesting the inclusion of some particular statesman in the Cabinet, (*ii*) refusal to accept a particular statesman recommended by the Prime Minister, and (*iii*) criticism of the selection of a particular statesman on the ground of the latter's incompetency to fill a particular office. But all such influence is in the nature of persuading and not coercing the Prime Minister.

Composition of the Cabinet. The composition of the Cabinet is a very important task before the Prime Minister. His choice natur-

ally falls on those who are able and influential, although expediency plays some part in the selection. Usually experienced persons are appointed, although personal friendships are sometimes rewarded. By convention service men are not taken into the Cabinet. But due to exigencies of the war Lord Kitchner was included in the Cabinet in 1914 and 1915, even though he made it a condition that during the pendency of the war he would not resign from the army. Another important departure was made in the formation of the war cabinet of 1914-19 by the inclusion of General Smuts of South Africa (as till 1914) no person from outside Britain was made a member of the cabinet. Since the passing of the Ministers of the Crown Act, 1937, at least three cabinet ministers and three Parliamentary Under-Secretaries must be drawn from the House of Lords. According to this Act the cabinet ministers are : Prime Minister and First Lord of the Treasury, Chancellor of the Exchequer, Secretary of State for Home Affairs, Secretary of State for the Dominions, Secretary of State for Foreign Affairs, Secretary of State for Colonies, Secretary of State for War, Secretary of State for Air, Secretary of State for India (this office has now been abolished), Secretary of State for Scotland, First Lord of Admiralty, President of the Board of Trade, Minister of Agriculture and Fisheries, President of the Board of Education, Minister of Health, Minister of Labour, Minister of Transport, Minister of Co-ordination, Lord President of the Council, Lord Privy Seal, Postmaster General, First Commissioner of Works and Minister of Pensions. They get salaries as fixed by the Act.[1] As the House of Commons is the place where the political battle between the parties is fought, Ministries are made and unmade, and the Government is called upon to defend its policy before the representatives of the

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[1] According to the Act the Prime Minister and First Lord of the Treasury gets £10,000 p. a., and a pension of £ 2,000 a year at the termination of office; then the second category includes Chancellor of the Exchequer, Principal Secretaries of State, First Lord of the Admiralty, President, Board of Education, Minister of Health, Minister of Labour, Minister of Transport, Minister of Co-ordination, Lord President of the Council, Lord Privy Seal, Postmaster General, First Commissioner of Works, each £5,000 p. a.; the third Category includes the Ministers of State £3,000 p. a.; the Parliamentary Under-Secretaries get £1,500 p. a.; (but the P. S. to the Treasury gets £3,000 p. a.; the Financial Secretary £3,000 and Secretary to the Department of Pensions), and the Assistant Postmaster gets £1,500 p. a.; each of the Five Junior Lords of Treasury get £2,000 p. a.; while the Leader of the Opposition, although the most troublesome thorn in the flesh of the Cabinet gets £5,000 p. a.

people, most of the important Ministers and Parliamentary Under-Secretaries are drawn from the lower chamber.

Reconstruction and reshuffling of a Cabinet. The personnel of a Cabinet is not regarded as fixed, and subsequent reshuffling takes place as a Prime Minister has power not only to form a Cabinet, but also to reconstruct it at any time if circumstances render such a change desirable. These circumstances usually are the resignation of some Minister or Ministers due to a crisis or otherwise, the desire of a Prime Minister for reconstruction of his Cabinet after a successful general election, and the desire of a Prime Minister to strengthen the position of his Cabinet. In doing this work, the Prime Minister consults not only the leaders of his party but also the Ministers and statesmen affected.

The Prime Minister: his position and responsibilities. The success of a Cabinet and the nature of the policy of government depend upon the personality, character and ability of the Prime Minister. Ramsay Muir says that the Cabinet is the "steering wheel of the ship of state," and the Prime Minister is the steersman. Curiously the office and designation of the Prime Minister though so often described in books on the English Constitutiton, was not officially recognised until 1905, and not known to law until 1937. The Salaries Act 1937 mentioned the salary attached to the office of 'Prime Minister and First Lord of the Treasury.' A statesman, as chosen by the King, becomes Prime Minister on accepting the King's commission to form a ministry. Formerly the Prime Minister's position was *primus inter pares* (first among equals) in the Cabinet but recently it has undergone change, and he is necessarily in a stronger position today than ever before. He is the leading figure in the Cabinet. His main duties are to form, summon, adjourn and preside over the Cabinet. He appoints and dismisses the ministers and shapes the general policy of administration in consultation with his colleagues. He makes a large number of appointments to junior posts in the Ministry. He allocates portfolios among his colleagues. He advises the king to dissolve Parliament and order general election to ascertain the will of the electorate on important issues. Though the King can legally object to the Prime Minister's request for dissolution, he merely uses his influence to persuade his Ministers to drop the idea of dissolution. The Prime Minister is the sole means of communication between the Cabinet and the King. In the distribution of Crown's honours and distinctions he has the decisive voice. On all matters of general policy he is

expected to speak the final official word in Parliament. He is, therefore, the recognised leader of the House of Commons, unless, due to overwork, for example, in cases of national or international emergency, he delegates this work to any other minister. It is the Prime Minister who makes public statement of governmental policy and accords interviews to representatives of the press. He is largely responsible for the foreign policy of Britain; he can exchange public messages with ministers in other countries; even when he does not hold the portfolio of foreign affairs he can actively participate in the shaping of foreign policy and the conduct of foreign relations, as was done by Neville Chamberlain in negotiating with Herr Hitler and signing the Munich Agreement although Lord Halifax was the Foreign Secretary. In October 1956, Prime Minister Anthony Eden was largely responsible for British policy over the Suez, though he was not in charge of foreign ministry. He had to resign because his policy was not endorsed by the country. His successor Harold Macmillan has more responsibility for shaping British foreign policy than the Foreign Secretary, Selwyn Lloyd. The Prime Minister can hold any portfolio he likes in addition to that of the First Lord of the Treasury.

The position of the British Prime Minister has no parallel among the executive heads in democratic countries. Lord Morley describes him as the keystone of the Cabinet arch. He is the chief steersman who controls the Cabinet which, as Ramsay Muir puts it, is "the steering wheel of the ship of the State". The Prime Minister is responsible for setting the whole governmental machinery into motion. But the influence which a particular Prime Minister may wield in the Cabinet depends upon his personal qualities. In order to retain influence, he generally has an inner group "composed of his most trusted and confidential friends, who decide important measures and support him in the Cabinet meetings." He has to collect and interpret the general sense of his colleagues. He has to be tolerant and patient with his colleagues to win their confidence and respect. Though at the helm of the Cabinet and the chief maker of its policy, he cannot be an autocrat or a Caesar in the Cabinet. He cannot afford to crush the individuality of his colleagues. But when he finds strong opposition to his policy he does threaten to resign, as Gladstone often did, and thus regain his superior authority. Lord Salisbury's characteristic expression to meet with opposition in the Cabinet was, "I shall tell them that if they insist on such-and-such, they must find another Prime Minister." But such threats cannot always be effectively used; Anthony Eden had to go

making way to Macmillan.

The actual powers and functions of the Prime Minister in Great Britain are nowhere defined; they are composed of political customs and practices. In the words of Lord Melbourne (1841), the position is: "How the power of the Prime Minister grew up into its present form it is difficult to trace precisely, as well as how it became attached, as it were, to the office of the First Commissioner of the Treasury. But Lord Melbourne apprehends that Sir Robert Walpole was the first man in whose person this union of powers was decidedly established, and that its being so arose from the very great confidence which both George I and George II reposed in him, and from the difficulty which they had in transacting business, particularly George I, from their imperfect, knowledge of the language of the country."

The powers and functions of the Prime Minister may be summarised thus:

(*a*) **Functions regarding the Cabinet.** He forms, summons, adjourns and presides over the Cabinet meetings. He is chairman of the Committee of Defence. He is a member of the *ad hoc* committees of the Cabinet.

(*b*) **Power of appointing and dismissing ministers.** Though all officers including the ministers are appointed and dismissed in the King's name, it is the Prime Minister who is usually responsible for these acts. The appointment of the Sovereign's private secretary is the only one outside the Prime Minister's power. In exercising the power of appointments, the Prime Minister may or may not consult his colleagues.

(*c*) **Power of supervision over departments.** In theory, the Prime Minister superintends and controls the different State Departments, but in actual practice, he has no time to do it due to heavy increase in his work and responsibilities during the last half century. It has, therefore, become impossible for the Prime Minister to exercise effective control over other departments. He, however, is ever vigilant regarding the working of the foreign affairs department as the policy and working of this department affect the relations of Great Britain with other countries. His right of control over foreign affairs consists of: (*i*) Right to be consulted; (*ii*) Right to have access to and see all important papers of the Foreign Office; (*iii*) Right to see foreign

ambassadors in London and communicate with British representatives abroad ; (*iv*) Right to represent Great Britain at meetings of heads of foreign States.

To discharge these powers and functions, it is essential that the Prime Minister must appoint his most trusted and dependable friend as Secretary of State for Foreign Affairs.

(*d*) **Functions relating to Parliament.** As the Cabinet is responsible to the House of Commons, the Prime Minister generally acts as the Leader of that House, although he may, in case he is otherwise busy, appoint one of his colleagues to lead the House, as Anthony Eden appointed R. A. Butler as the Leader of the House of Commons. The Prime Minister announces in the Commons the policies of the Government on all important matters. He requests the sovereign to order dissolution of the House. This the Prime Minister may do after consultation with the Cabinet, or on his own responsibility. The King cannot refuse dissolution.

(*e*) **Royal patronage.** All distribution of royal patronage, falling within the prerogatives of the Crown, is done by the Prime Minister. Members of the Cabinet may submit the names of recipients of honours or appointments but it is left to the Prime Minister to accept or reject the names.

Internal organisation of the Cabinet. The internal organisation of the Cabinet is the result of an evolutionary process. At first the King used to preside over the meetings of his principal advisers. Since the accession of George I, this practice stopped and all power passed to the Prime Minister who now presides over the meetings. Cabinet meetings are held for deliberating upon state affairs.

Meetings, how held. The Prime Minister may call a meeting at his will and according to necessity. Any member of the Cabinet may also ask the Prime Minister to call a meeting; but it is for the Prime minister to comply with the request or not. The time, date, and place of meeting are fixed by the Prime Minister, but the agenda is not mentioned although the members know what subjects are to be discussed. On an average, a meeting of the Cabinet lasts for two hours. Meetings are generally held in the afternoon. During the post-war period there have been more meetings than before the First Great War, due to increase in business. During the War, meetings were held almost everyday. There were more than 300 meetings in 1917, and 187 during 1918. In normal years the number of meetings

is about eighty to ninety.

Attendance at meetings. There is no quorum for Cabinet meeting; the Prime Minister, or other Ministers may absent themselves in case of indisposition. An absentee member may send his opinion on any matter in a letter to the Prime Minister. When the Prime Minister is absent, the function of presiding over the meeting devolves upon a minister who is an old statesman or is otherwise very influential in it. In Cabinet meetings there is no fixed order for seating of the members when the Cabinet meets, but important members usually sit next to the Prime Minister.

What subjects are discussed? All important matters are discussed by the Cabinet. Each minister brings up matters relating to his department, because the Cabinet as a whole is responsible for the shaping of policy. "The questions discussed in the Cabinet are usually concerned with the political events of the day. "The members of the Cabinet ignore trivialities, and concentrate their energies and proved wisdom upon the solution of the problems of first-rate importance with which they are confronted."[1] The Budget and the King's Speech are among the most important matters discussed; foreign policy comes next.

No regular minutes are kept. The decisions of the Cabinet are not generally embodied in a formal document. Notes of decisions are kept in order to advise the Sovereign, to inform the succeeding Cabinet, and to avoid possible mistakes and confusion. Members are debarred from taking notes during the proceedings, only the Prime Minister takes notes for communicating his own views and those of his colleagues to the Sovereign. The decisions are generally arrived at by a majority view. The opinion of the Prime Minister weighs much as he is the person responsible for the general direction of policy. The proceedings of the Cabinet are kept secret.

Functions of the Cabinet Secretariat. There is a Secretariat attached to the Cabinet. The functions of the Cabinet Secretariat were thus summarised in the report of the War Cabinet in 1917: (*i*) To record the proceedings of the War Cabinet; (*ii*) To transmit the decisions of the War Cabinet to those departments which were concerned in giving effect to them or were otherwise interested; (*iii*) To prepare the agenda papers; to arrange for the attendance of Ministers and other persons concerned; and to procure and circulate the documents

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[1] Yu. *The English Cabinet System*, p. 241.

required for discussion; (*iv*) To attend to the correspondence connected with the work of the War Cabinet; (*v*) To prepare the report referred to in the previous section.[1]

Committees of the Cabinet. Some of the important matters before the Cabinet, which relate to technicalities, are referred to the Committees into which the Cabinet is divided for the purpose of more speedy and more efficient working. The most important committee of the Cabinet is the Committee of Imperial Defence which consists of, besides the First Lord of the Admiralty and the Secretaries of State for War and Air, such non-Cabinet members as are chosen by the Prime Minister on account of their expert knowledge of military affairs. Then there is the Committee of Home Affairs which deals with important questions of home administration. There are *ad hoc* Committees to examine and study particular problems and prepare and consider Bills for introduction into Parliament.

Inner Cabinet. The work of administration of such a vast Empire needs great secrecy of important decisions and quick formulation of policies. This is impossible to achieve in an unwieldy Cabinet of 23 Ministers. Usually, there is an Inner Cabinet consisting of very important and influential Ministers whom the Prime Minister usually consults before going before the whole Cabinet. This ensures greater support to the Policy of the Prime Minister when it is formally discussed by the Cabinet.

War Cabinet, 1916-18. The necessity of a smaller or Inner Cabinet was very much felt during the course of the Great War (1914-18) to ensure speedier decision on War matters, more vigorous prosecution of the War, and greater secrecy of Cabinet deliberations. Mr. Lloyd George formed the War Cabinet, December 1916, after the resignation of Mr. Asquith (then Prime Minister) due to differences of opinion with the former. This War Cabinet was composed of Mr. Lloyd George (Prime Minister), Lord Curzon (President of the Council), Lord Milner, Mr. Arthur Henderson (minister without portfolio), and Mr. Bonar Law (Chancellor of the Exchequer and Leader of the House of Commons). Later, General Smuts was included in the War Cabinet, thus indicating the solidarity of the Empire in the prosecution of the War. Executive power and responsibility was thus concentrated in the small body of six men, in place of the unwieldy Cabinet of 23 administrative officers who were

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[1] *Ibid*, p. 259.

also active leaders in Parliament.

War Cabinet, September 1939. Again when in September, 1939, England declared war on Germany, Mr. Chamberlain formed his War Cabinet consisting of nine members, *viz.*, Mr. Chamberlain, Lord Halifax, Mr. Hore-Belisha later replaced by Mr. Stanley, Mr. Winston Churchill, Sir Charles Kingsley Wood, Lord Chatfield, Sir John Simon, Sir Samuel Hoare, and Lord Sankey, Mr. Anthony Eden, though not included in the War Cabinet, was given special access to it. This Cabinet was criticised as unwieldy for vigorous prosecution of the War, particularly by the leaders of the Opposition.

Cabinet and Ministry distinguished. The Cabinet, *i. e.*, the body of 17 Ministers in normal time, must be distinguished from the Ministry which is a much larger body consisting of the seventeen Cabinet Ministers, 15 Ministers not in the Cabinet and a large number of office-holders and Parliamentary Secretaries. Formerly, before the war of 1914-18, the Ministry was usually composed of 60 to 70 persons in all. But during the post-war period new offices were created and new departments opened to cope with the increasing volume of governmental work. The new ministries included ministers of labour and pension, a food controller and shipping controller. A separate Air Board was created, followed later by additional ministries of national service, reconstruction, transport and co-ordination. So that at the present time the total strength of the Ministry, though not fixed by any Act or Statute but depending largely upon the arrangements made by each Prime Minister, reaches even a hundred. The resignation of a Cabinet involves automatically the resignation of the whole body of Parliamentary Secretaries and other junior officials who come into office with the Cabinet.

This revolution in the composition of Inner Cabinet, *i. e.*, War Cabinet, and Ministry and their relations with the House of Commons has been summed up in these words by Sir Sidney Low:

"For the ministerial and administrative cabinet collectively responsible to parliament, officered and recruited entirely from the parliamentary circle, intimately related to the House of Commons, framed on rigid party lines, and conferring with absolute secrecy, we have a cabinet which is not a ministry and a ministry which is not a cabinet; a cabinet which directs but does not administer; a ministry which has exchanged collective responsibility for individual responsibility; a cabinet which has very loose connection with the House of Commons, and for some purpose is virtually independent of it; which stands

outside our party divisions; which admits to its confidential deliberations of representatives of all the great estates of the Empire as well as those of the United Kingdom; and which still holds private, but no longer in the strictest sense, secret meetings.

"Like most revolutions it is really the result of a long process of evolution.... The inner cabinet had long existed in a more or less unacknowledged form. Mr. Asquith regularised the inner cabinet and gave it definite status as the war cabinet, and he made a step towards abolishing the secret conclave by providing this committee with a secretary".

Exact position of the Cabinet. The exact position and powers of the British Cabinet in the governmental system of the United Kingdom evoke the surprise as well as the admiration of foreign observers. Although in theory the Cabinet is the servant of Parliament, *i. e.*, really of the House of commons, inasmuch as it carries out the policy of the House and remains in office so long as the House gives it confidence, in actual practice, the Cabinet is the master of the House and controls it in many ways. The Cabinet is drawn from the majority party in the House, whose recognised leader is the Prime Minister. According to party discipline the rank and file of the party supports the policy of the Cabinet in the House. It is the Cabinet that instructs the party whips to order the members of the party to vote in a particular way on a certain measure. Moreover the majority party is anxious to retain its own Cabinet in office as long as possible, hence individual members of the party feel compelled to obey implicitly the instructions of the party whips.

Dictatorship of the Cabinet. Individual freedom of the members of the party is thus destroyed, particularly in regard to criticism of the policy of their Cabinet. Moreover the Cabinet decides what particular days are to be allotted to non-official business. Most of the time of the House is really devoted to a discussion of the measures, general and financial, introduced by the Cabinet. Private members may criticise these measures and the Opposition may, if it chooses, bring forward a vote of no-confidence in the Cabinet. But the Cabinet, relying on the blind support of the rank and file of its party, may well afford to disregard the wishes of the opposition and scoff at its criticism. A private member anxious to have his measure passed by the House must humour the Cabinet and win its support, otherwise he has not the least chance of successfully piloting his measure through the House. In this way, the Cabinet controls the House and this is often described as the dictatorship of the Cabinet.

No doubt, under the present system, the House works generally to register the will of the Cabinet, though on occasions the Cabinet has to face vigorous criticism of its measures and policy. In October 1956, the Anglo-French invasion of the Suez Canal region evoked strong opposition in the House of Commons and in the country. Prime Minister Anthony Eden had to resign making way for the formation of Harold Macmillan's Cabinet (though from the same Tory party). When the Cabinet is backed by a very large majority in the House, it can safely ignore the criticism of the opposition and vigorously pursue its own policy without any fear, as was the case with the Labour Cabinet from 1945-1949. But if the majority in just a majority (for example, the Labour Majority of 6 only since the elections of February 23, 1950), the cabinet is bound to move with caution. The exact situation may be expressed thus. Recently, due to heavy work before Parliament, the powers of the Cabinet have considerably increased and the importance of an ordinary M. P., particularly if he is on the opposition benches, much reduced. But the opposition party in Parliament and the vigilant press in the country force the Cabinet to exercise its powers in general accord with the opinion of the electorate.

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9

THE WHITEHALL AND CIVIL SERVICE

Of all the existing political traditions in England, the least known to the public, and yet one of those most deserving attention, is that which governs the relation between the expert and the layman.

—PRESIDENT LOWELL

* * *

The outlook, power and quickness in comprehension, the gift of dealing with people, the readiness to take the initiative and to assume responsibility, are all in the main highly developed when the business to be transacted is seen by Civil servant against a background of other knowledge of the type through which the mind has become developed.

—LORD HALDANE

The Whitehall

What is the Whitehall? While No. 10, Downing Street, the official residence of the British Prime Minister (the place where Cabinet meetings are generally held), shapes the policy of government, and while it is in the Parliamentary Houses that the policy is approved, it is in the Whitehall that general administration, in accordance with the policy of the Government of the day, is conducted by an army of departmental chiefs and civil servants, experts in the art of government. The offices in the Whitehall are ever buzzing with activity unmindful of the political battle raging in the House of Commons or the serious and secret discussions taking place among the Cabinet Ministers. Cabinets may come and go, the departmental heads in the Whitehall may change, but the permanent administrative experts carry on their duties of administration unconcernedly.

Departmental Heads of Administration. While the Cabinet lays down the policy, all details connected with the working out thereof and all routine business are left to the various departments of State. At the head of each of these departments is placed a member

of the Government who is responsible for everything done or left undone by the department. In most of these departments there is an Under-Secretary, who is also a member of the Government. It is a frequent practice for one of these two ministers to be chosen from the Lords and the other from the Commons, in order that there may be some person in each House competent to answer queries with regard to the work of the department. Both representatives, however, of the Home Office and the Board of Trade are now in the House of Commons. These parliamentary heads of departments are members of the ministry of the day; they come into office and go out of it with the ministry. They are 'amateurs' who are concerned with policy making, and, therefore, need not possess any technical knowledge of the department concerned. For example, the head of the War Office may be a philosopher. The Chancellor of the Exchequer may be very poor at arithmetic, and the Postmaster-General may not even know how much stamp is to be fixed on a letter. Each of them is appointed as head of the department to see that the policy of the ministry is followed, and each of them is, therefore, responsible to Parliament.

Besides these parliamentary heads of departments there are a number of permanent officials who are experts in the technical side of the department concerned and a clerical staff. It is probable that when any one of the ministry is first appointed to the headship of one of these government offices he has no practical experience of running a government department. His time is also occupied by his other parliamentary duties. It is, therefore, necessary that there should be permanent trained officials, on whom the parliamentary head may rely, and who preserve the continuity of the administrative work of the various offices. Indeed, to a large extent they direct the executive machinery of the country, but, while they are responsible to their parliamentary head, the latter is the person who is responsible to Parliament, and thus to the nation, for the proper and efficient administration of its affairs.

The existing departments are the result of a long development since the days when the officials whom we now call civil servants were, in fact, servants of the King's household—the King's clerks for collecting money, and secretaries who conveyed the King's orders to his subjects. But nowadays the civil service is not paid out of the King's income, as their salaries are directly voted from the public funds by the representatives of the people in Parliament. Only since 1848, however, have the estimates for the various departments been presented to Parliament

in detail. The present basis of administration, therefore, is comparatively new, but the functions performed by the departments are in many cases very old.

The functions of the various departments are now generally laid down by Parliament. Members of Parliament and the general public seem to forget that when some new governmental activity is created, some body must be appointed to put it into practice. Policy is expressed in the Act of Parliament, but an Act is not self-executing. It makes work for somebody, and often for a large number of persons. For example, the National Insurance Act of 1911 necessitated a large addition to the civil service and so did the Education Act of 1918, but Workmen's Compensation Act hardly meant any increase of work of the national civil service because its administration largely devolved upon local authorities. Parliament, when it passes an Act, usually designates the department by which it is to be administered. If practicable, it names one of the existing departments, but when necessary a new one is also created. Several new departments have been brought into existence within the past twenty years or so.

The following, at present, are the Departments of State, which control the work noted against each:

Home Office—Control of Police; Immigration; Prisons; Public Order; Working conditions in Factories, etc.

Foreign Office—Relations with Foreign Powers.

Colonial Office—Administration of the Colonial Empire.

War Office—Administration of the Army.

Air Ministry—Administration of Royal Air Force and Control of Civil Aviation.

Commonwealth Relations Office—Relations with the members of the Commonwealth; Work of Imperial Conference.

Admiralty—Administration of the Navy.

Ministry for the Co-ordination of Defence—Co-ordination of Defence Departments.

Board of Trade—Commercial and Industrial Policy; Administration of Statutes relating to merchant shipping, key industries, patents, etc.; Overseas Trade; Mines; Collection of Statistics.

Ministry of Supply—Administration of Supply for War Department.

Lord Privy Seal—(Minister without Portfolio)—At the moment the Lord Privy Seal is in charge of Air Raid Precaution measures.

Privy Council—Formal duties in connection with making Orders in Council; Scientific research. (The Lord President is a member of the Cabinet and acts as a Minister without Portfolio).

Ministry of Health—Administration of all Local Government and Health services, Housing and Town Planning.

Ministry of Transport—Administration of Transport, Communications and Roads.

Board of Education—Administration of all Education services.

Ministry of Labour—Administration of Employment and Unemployment; Labour disputes.

Ministry of Pensions—Administration of Pensions.

Ministry of Agriculture and Fisheries—Administration of Agriculture and Fisheries; Control of Marketing Schemes.

Chancellor of the Duchy of Lancaster—(Minister without Portfolio)—At the moment the Chancellor is in charge of the Refugees problem.

Treasury—Administration of Finance and Expenditure.

Scotland—Administration of all Departments for Scotland.

Office of Work—Control of public buildings, ancient monuments, royal parks, etc.

There has recently been a feeling that the multiplicity of departments has led to inefficiency in administration due to lack of greater co-ordination and homogeneity. A rearrangement of the departments so as to reduce their number is sometimes suggested as a step towards improvement. Stafford Cripps,[1] for example, suggested that the reduction in the number of departments and re-grouping of their duties may be made thus: *Defence* (in charge of War Office, Admiralty, Air Ministry and Ministry for the Co-ordination of National Defence, Lord Privy Seal, Ministry of Supply, and Ministry of Information); *Treasury: Foreign Office* (to include Foreign Office, India, Pakistan and Burma);[2] *Empire* (including Dominion Office and Colonial Office); *Home* (in charge of Home Office, Factory legislation, Peace and War); *Trade* (including Board of Trade, Shipping, Overseas Trade, and Mines); *Health* (to include Ministry of Health, and Local Government); *Transport; Labour; Agriculture and Fisheries; Scotland; Board of Education* (in-

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[1] *Democracy Up-to-date*, pp. 83-84.

[2] Burma has now no connection with the Commonwealth; India and Pakistan, though Republics, continue their membership of the Commonwealth.

cluding Office of Works, Ministry of Pensions, Duchy of Lancaster, and Privy Council together with Scientific Research, etc.)

How present departments may be classified? Besides the Treasury (which stands apart and in a sense controls the activities of the others) the existing departments can be grouped into four types. First, there are those which embody the oldest functions of government; namely, defence and the maintenance of law and order. In this class come the War Office, the Admiralty, the Air Ministry and the Home Office, Scotland; there are departments which have to deal with external relations (External to England)—the Foreign Office, the Office of the Secretary for Scotland, the Commonwealth Relations Office, and the Colonial Office. Third come the economic departments such as the Board of Trade and the Ministries of Labour; of Agriculture, and of Transport. To these might be added the office of the Postmaster-General, although this service is connected with the Treasury. Finally, there are departments which deal with matters of social amelioration —the Ministry of Health and the Board of Education.

These departments are variously organised. Some of them are headed by Secretaries (Home, Foreign, War, Air, Scotland, Commonwealth Relations, Colonies); some are nominally organised under Boards (Treasury, Admiralty, Education, Trade) but are virtually controlled by single individuals; and some again, have single heads known as Ministers, (Labour, Agriculture, Health, Pensions, Transport). Each department, however organised, is an administrative unit by itself, but there are inter-departmental committees for the consideration of matters (the health of school children, for instance) which concern more than one department. These agencies of liaison have been increasing in recent years so that the whole administrative machine has become a stupendously complicated one.

It would take an entire volume to explain the organisation and describe the functions of all the departments. There are now twenty-six of them, and indeed more than that number if the term "department" be considered in a broad sense. It must suffice, therefore, to indicate the structure and principal functions of a few departments only.

1. The Exchequer. The pivot of the English system of natural finance is the Exchequer. It is one of the oldest of existing governmental institutions, having originated during the Norman times. At the outset, it was merely the King's agency for collecting his own income; then it became the mechanism by which the national taxes were

gathered, but it still remained under the King's immediate control. Finally, since 1689, it has become responsible to Parliament, and in particular to the House of Commons. The basis of this Parliamentary control is to be found in the fact that no money can be brought into the Exchequer, or paid out of it save by the authority of Parliament. Whether realised by taxation or by borrowing, it must be paid in the first instance to the credit of the Exchequer where it goes into the Consolidated Fund, and the Exchequer will not issue it out of this fund except on the authority of Parliament. Sometimes Parliament gives this authority in a continuing form—that is, it provides that some salary or other expenditure shall be a permanent charge on the Consolidated Fund, but for the most part the expenditures are authorised annually by means of definite appropriations.

Chancellor of the Exchequer. The head of this institution is the Chancellor of the Exchequer, a member of the Cabinet and a very important one. With the possible exception of the Secretary of State for Foreign Affairs, he holds the most important portfolio in the ministry. It is not necessary that the headship of the Exchequer shall be held by a financial genius, for there are financial experts among the Chancellor's immediate subordinates, and from these he can obtain advice on any technical matter. Nevertheless, a capacity for dealing with figures, a good memory, and a relish for details are qualities which make any statesman's tenure of the office more palatable. Gladstone, although an idealist and a scholar, was very much at home in the realm of finance. He would probably have made a huge success as a banker or broker. But the most important among the qualities which a Chancellor of the Exchequer must have is the ability to think quickly and to express himself clearly on the floor of the House. He will have questions of all sorts hurled at him from the benches on both sides, from above the gangway and from below it. Many of these will not be framed to embarrass him but merely to elicit explanations of matters which are obscure to the average member. He must be able to give, in a few words, an explanation that explains. It is surprising how few men can do this. Many parliamentarians, when asked to clear up some difficulty in the minds of their hearers, only make it a little more confused than it was.

The Chancellor of the Exchequer is not merely the traditional head of this ancient institution, he is also the actual (although not the titular) head of the Treasury. Here we encounter a complication of nomenclature which is very confusing to the student of English govern-

ment. At Washington there is a Treasury Department (often more briefly known as the Treasury) whose head is known as the Secretary of Treasury, a member of the President's cabinet. He is the finance minister of the United States. But in England the organisation is by no means so simple. There the Treasury is nominally under a board which is presided over by a First Lord of the Treasury. This post of First Lord is usually (but not always) held by the Prime Minister, but in any case the First Lord of the Treasury does not serve as the real head. Nor yet do the junior Lords of the Treasury serve as members of the treasury board. The board, as a board, is a sham. It exists in name only. All its functions, including those of its titular head, are exercised by the Chancellor of the Exchequer. He is the real finance Minister. It is he who is responsible for making the receipts cover the expenditure and for initiating whatever legislation may be necessary to bring this about. It is he who defends, on the floor of the House, the financial policy of the Government. His financial proposals are the proposals not only of the Treasury but of the Ministry as a whole. Being a member of the Cabinet he first lays his proposals before that body, and his colleagues may persuade him to modify them, particularly as respects the larger issues; but in the main the Cabinet defers to the advice of the Chancellor. Inevitably it must do so for the Chancellor has his recommendations worked out carefully; he has had data collected for him by his subordinates; he has expert advice on all technical matters; he has a great advantage over his colleagues who have little but their own off-hand judgment to rely upon.

2. The Home Office. The Home Office is a relatively small department with a miscellaneous group of functions. It is headed by a Home Secretary who is invariably a member of the Cabinet. Under him is a Parliamentary Under-Secretary, a Permanent Under-Secretary, a prison commissioner, a metropolitan police commissioner, a chief inspector of factories, several inspectors of constabulary, and about four hundred other officials of varying ranks and grades. Only the Home Secretary himself and the Parliamentary Under-Secretary are political officers; the rest are permanent officials who do not go out of office when a change of Ministry takes place.

In a general way the Home Office is concerned with the maintenance of law and order, with police, police courts, prisons, pardons, the naturalisation of aliens, the extradition of criminals, the supervision of liquor licensing, and the surveillance of potential trouble-makers. Its functions are mainly those of a department of justice or

interior. Not wholly so, however, for the Home Office has charge of factory inspection and the enforcement of factory law. It is rather strange that this purely industrial function should be given to a non-industrial department, but the explanation is historical. Over a century ago (1833) when the first Factory Acts were passed, the inspectors were attached to the Home Office because there was no other convenient place where to put them and because factory inspection in those days was looked upon as a police measure designed primarily for the prevention of crime and immorality. To-day the work has a far more broadly constructive purpose and has little relation to "law and order" in any literal sense, but its supervision remains where it was originally placed. Unlike the corresponding department in continental European countries (known as the Ministry of the Interior), the Home Office in England has no supervision over local government save in the matter of policing.

3. The Foreign Office. The Foreign Office is headed by a Secretary of State for Foreign Affairs, who is always of Cabinet rank. The Prime Minister has occasionally taken this portfolio for himself. The Secretary is assisted by a Parliamentary Under-Secretary, a permanent under-secretary, two assistant under-secretaries, a financial officer and several counsellors, besides a subordinate staff of considerable dimensions. The functions of the Foreign Office are world-wide and its work is mainly subdivided by groups of countries rather than on a basis of differentiation in the subject matter to be dealt with. Each section of the Foreign Office deals, therefore, with correspondence and general policy arising out of British relations with a certain portion of the world-map—with Africa, the Far East, and so on. During war time and periods of international tension this office becomes the most important department of administration.

The Foreign Office collects and reviews information about all foreign countries; it gives instruction to British ambassadors, ministers, and other diplomatic officials abroad; it deals with foreign diplomats in England; it negotiates treaties; it arranges for British representation in international conferences. Formerly, it had supervision of the consular service but the main functions of this service, namely, the development of foreign trade and the negotiation of commercial agreements, are now supervised by the Overseas Trade department of the Board of Trade. The Foreign Office, unlike the Home Office, functions for the whole Commonwealth of Nations and not for England alone. But recently the Dominions and Republican members of the

Commonwealth, like India and Pakistan, have become independent in their dealings with foreign states.

4. The Ministry of Labour. The Ministry of Labour is a new department, established in 1917. Since its inception the Minister of Labour has been a member of the Cabinet. The functions of this Ministry are not altogether new; most of them were taken over from the Board of Trade. In a general way, the Ministry of Labour deals with the personnel issues arising out of industry, supply and organisation. More particularly it has to do with conciliation and arbitration in industrial disputes, with employment exchanges and unemployment insurance, with trade boards, and with the compilation of labour statistics. In a word, this department concerns itself with problems of industrial personnel rather than with questions of industrial production, marketing, and financing. It supervises the working of the Industrial Courts Act of 1919 which provide machinery of investigation and arbitration in the case of labour disputes, and Whitley Councils. It has functions with reference to the trade boards or minimum wages commissions as they are called in the United States. These boards, appointed under the aegis of the Ministry, are composed of members representing the employers, the workers, and the public. When a trade board, thus constituted, fixes a minimum rate of wages in an industry, the Minister of Labour issues an order making it obligatory upon employers to pay at least this rate. Employment exchanges were first established under governmental auspices in 1909. After the War they were greatly increased in number; they now dot the whole country. Their business is to find jobs for workers and workers for jobs. They are maintained out of public funds. In 1920, moreover, the Employment Insurance Act greatly widened the scope of the Government's insurance against unemployment and threw large additional burden on the Ministry of Labour.

The argument for unemployment insurance has been summarised as follows:

Unemployment is now recognised to be a normal phenomenon of the industrial system, due to fluctuations of trade, of season, or to maladministration of works. The unemployed, therefore, are not merely persons who suffer distress while they earn no wages, but are a reserve of the industrial army, waiting in slack periods to be called up in times of pressure. But the reserve of an army must be maintained in efficiency while not actually in the trenches, and therefore unemployment insurance funds are for the maintenance of an indus-

trial reserve. This reserve, however, is useful not to any one industry taken separately but to the whole community, and the Government in the unemployment insurance system is, therefore, performing an industrial function for the sake of the whole community. No doubt the function might be better organised and improved, but even as it is, the system is an advance on the chaotic creation of distress by unemployment, varied as it was until the twentieth century by sporadic and not altogether kindly exhibitions of deterrent charity.

Viewed as a whole, then, the Ministry of Labour is an office for the furtherance of employment and the maintaining of good relations between employers and workers—not for the control of these relations. To some extent it does restrict and control these relations, as in the case of trade board orders, but the tendency has been to promote and supplement the activities of labour unions, joint industrial councils and other voluntary bodies rather than to substitute for them the authority of the sovereign State.

5. The Ministry of Health. The Ministry of Health, established in 1919, bears a somewhat misleading name. Its functions are partly, but not primarily, concerned with the public health. It took over, at its creation, the principal duties of the old Local Government Board and combined these with the work of the national insurance commissioners. The Ministry of Health also acquired duties from other departments. For example, from the Board of Education the medical inspection of children, and from the Home Office certain powers in relation to the insane and feeble-minded. On the other hand, some of the functions of the Local Government Board did not come to the Ministry of Health but went elsewhere, *e. g.*, some functions in relation to municipal tramways went to the Ministry of Transport.

Powers of Health Ministry. In general, this Ministry now deals with the administration of the poor-law relief, with the audit of local government account, with quarantines, the prevention of epidemics and the protection of the public health in a broad sense, as well as with a multitude of the matters that concern the government of urban and rural communities. The new Ministry of Health was formed in order to fix responsibility and to co-ordinate administration. To it were transferred by the Ministry of Health Act 1919, subject to certain provisions, these powers; all the powers and duties of the Local Government Board; all the powers and duties of the Insurance Commissioners and the Health Insurance Commissioners; all the powers of the Board of Education relating to maternity and infant

welfare, and to the medical inspection and treatment of children and young persons ; all the powers of the Privy Council and of the Lord President under the Midwives Acts, 1902 and 1918; such powers of the supervision of the administration of part I of the Children Act, 1908, as had hitherto been exercised by the Secretary of State. There may also be transferred to the Minister certain specified powers—particularly the care of sick soldiers (now under the control of the Ministry of Pensions) and the control of lunacy (formerly handled by the Home Office) and any other powers or duties in England and Wales of any government department which relate to matters affecting, or incidental to the health of the people.

Consultative Councils. One important feature of the Ministry is the establishment of consultative councils, at present four in number, dealing with the medical and allied services, the working of approved societies, local health administration, and general health questions. The Ministry administers the old age pension provision. A department has been formed to deal with the welfare of the blind. Housing is an important branch of work. The Ministry also possesses powers for the initiation and direction of research. The Minister is assisted by one Parliamentary Secretary and a large staff of medical officers.

Several new departments were created since the out-break of the war in 1914, some of which were of an ephemeral nature, intended to meet merely temporary emergencies, and now disbanded. Examples of these are the Ministries of Blockade, National Service, Munitions, Shipping and Food. The short-lived Ministry of Reconstruction has now been dissolved and its work is absorbed by the separate departments concerned. A few of the departments created by the exigencies of war still remain, and some of these show every likelihood of being permanent ; of these the Ministry of Transport and the Ministry of Pensions are by far the largest. The latter was created in 1916 by an Act of Parliament which transferred to it the powers and duties of the admiralty, the Chelsea Commissioners and the War Office in respect of the administration of pensions. The department of Scientific and Industrial Research is another important post-war department. The committee of the Privy Council for this purpose was appointed by Order-in-Council in 1915 to direct, subject to conditions prescribed by the Treasury, the application of any grants made by Parliament for the organisation and development of scientific and industrial research. The committee consists of the Lord President of the Council, who acts as president of the committee, the Colonial Secretary, Chancellor of

the Exchequer, Secretary for Scotland, Chief Secretary for Ireland, Presidents of the Boards of Trade and Education, and five others. At the same time, an advisory council and a separate department was created to whom all proposals for research were referred. A number of Research Boards, such as the Fuel Research Board, have been created within the department for the purpose of special investigation.

6. Other Departments. There are also a number of older departments such as the Board of Trade(comprising the two main divisions of (1) the department of public services administration and (2) the department of commerce and industry), the Ministry of Agriculture and Fisheries, the Board of Education, the First Commissioner of Works, and the Postmaster General. All these departments carry on work which their respective names indicate. A practice also grew up during the first world war of appointing a prominent statesman to Cabinet rank without burdening him with even normal administrative duties. The "War Cabinet" of Mr. Lloyd George usually contained at least two of these "ministers without portfolio", and the practice was in the second war continued.

7. Commonwealth Relations Office. The India Office was till August, 1947, the office of the Secretary of State for India, one of the Principal Secretaries of State. From this office was controlled generally the administration of the vast Empire of India. The Secretary of State for India, a member of the Cabinet, was the head of the office. There were under him two Under-Secretaries, one Parliamentary and the other permanent. The Parliamentary Secretary was a member of Parliament but was not generally a member of the Cabinet. There was also a Council of Advisers, with a minimum of three and maximum of six Advisers appointed by the Secretary of State for a five-year term, for advising him in the discharge of his duties. The Secretary of State for India was a constitutional adviser to His Majesty the King in all Indian affairs ; he exercised general powers of superintendence, direction and control over the Governor-General and Provincial Governors, and recruited candidates to the Indian Civil, Police, Irrigation, and other services as laid down in sections 243, 246, 269, 273 and 314 of the Government of India Act, 1935. He was responsible to Parliament, like every other Cabinet Minister. After the passing of the Indian Independence Act, 1947, the India Office was abolished ; since then all relations of the British Government with the Government of India have been handled by the ministry of Commonwealth Relations, which deals with all the self-governing dominions and India. Since January 26,

1950, India has become a Republic, but according to the Premier's Declaration of April, 1949 (later approved by the Constituent Assembly of India) India continues to be a member of the Commonwealth of nations (of which the King is a symbol of unity). This explains why the Ministry of Commonwealth Relations, and not the Ministry of Foreign Affairs, now conducts British relations with India.

The Civil Service

The Old System lacked efficiency. The extended arm of the real executive in England, the arm that enables the various departments to function successfully, is the Civil Service which is now noted for its efficiency and ability. The history of this service is full of considerable interest and surprise. Before the sixteenth century the administration was conducted, in the remote parts of the country by persons who were, for all practical purposes, the nominees of the King's courtiers and barons. The system was extremely inefficient and unworkable. "The administrative apparatus of England from the middle of the sixteenth to the end of the eighteenth century worked so badly as to call forth law after law from the central authority, each complaining that the preceding one had not been properly executed. The preambles to these laws were compounded of complaints, scolding and exhortation."[1] The absence of a central officer to watch and control the conduct of local authorities led to serious financial loss and physical and spiritual miseries. The laws were really executed by the local gentry, mostly unpaid and non-professional. There was no distinction between purely executive and judicial work.

Beginnings of central control. It was towards the close of the sixteenth century that an attempt was made at exercising central control over local administration, particularly in regard to the enforcement of Poor Laws for ameliorating the condition of the famine-stricken people. In 1631, the *Book of Orders* published the orders and directions for the better administration of justice and more perfect information of His Majesty in regard to poor relief, etc. The outbreak of the Civil War interrupted the process of centralisation. The seventeenth and eighteenth centuries were the period of English colonial activities which occupied too much time and attention of Parliament. Towards the end of the eighteenth century, then, the administrative

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[1] Finer, *Theory and Practice of Modern Government*, p. 1283.

system of England was 'decentralized, non-professional, non-bureaucratic, liberal, with a dispersed and incoherent arbitrariness.' The administrative reform came along with constitutional reform, particularly because both systems, administrative and constitutional, were equally defective and the success of the latter depended largely upon that of the former. There was no definite record of the salaried employees, no central check over them, and "theAmeri can colonies were the happy hunting grounds of absentee salary-takers."

The reform of 1855 in the Civil Services. The year 1855 marks the beginning of the present British Civil Service. It is curious, indeed, that Macaulay's plan of recruitment to Civil Services under the East India Company in India, became a pattern also for the reform of the British Services. Lord John Russell, the Prime Minister, and Sir Charles Wood (Chancellor of the Exchequer) instituted an inquiry into the various departments of administration, conducted by Sir Charles Trevelyan (a brother-in-law of Macaulay) and Sir Stafford Northcote. Their report appeared in 1853 and its plan of reform was greeted by John Stuart Mill as 'one of the greatest improvements in public affairs ever proposed by a Government'. A separate type of examination was recommended for recruitment to different divisions of services. They further recommended general education as the standard, and not technical education, for those appearing at the competitive examinations. On May 21, 1855, an Order-in-Council was issued, establishing the Civil Service Commission of three members holding office during the pleasure of the Crown 'to conduct the examinations of young men proposed to be appointed to any of the junior situations in the Civil Establishments.' The Commission was empowered to lay down qualifications regarding age, health, ability and general knowledge for the competitors. The competition was, however, only permissive, for persons of mature age could enter the services without a certificate from the Commission.

Completion of the System in 1870. Another Order-in-Council, issued on June 4, 1870, completed the whole system of appointment, by (*i*) making competitive test obligatory for all new entrants to services, (*ii*) providing for exemption for professional officials if the Commissioners thought them fit, (*iii*) providing for direct appointment of certain officers by the Crown, (*iv*) authorising Heads of Departments, with the approval of the Civil Service Commissioners to dispense with examination for certain situations, and (*v*) giving special authority to the Treasury in the sphere of departmental organisation. Several

Commissions were appointed later, (for example, in 1875, 1884-90, 1910-14 and 1918), to lay down detailed rules and suggest improvements in the system of recruitment, etc.

Public Service Commission. At present the public servants are recruited by the Public Service Commission consisting of three members. The Commission holds a general competitive examination through written papers followed by oral examination and interview. The written examination tests the ability of the candidate in different subjects of study and general knowledge. The interview and oral examination are meant to see the personality, alertness, general intelligence and capacity of the candidate. After these tests the Commission publishes the results, and the government makes appointments from the list in order of priority. There is just one examination for all services. It is no concern of the Commission to fix grades or salaries or terms and conditions of services.

Present Civil Services in England. Thus the present system of Civil Service in England, based on open competition, has provided an army of efficient permanent administrative officers of different ranks. At the present time over half a million persons are employed as civil servants in the various departments. Of these about 330,000 are in the industrial departments, including Dockyards, Arsenal, and Post Office ; 70,000 in the clerical establishments; 16,000 as executive officials ; 1,300 administrative officers; 2,500 inspectors in the various departments; and 7,000 professional, technical and scientific workers. The administrative officers form the brain of the Services, and they come mostly from Oxford and Cambridge.

Whitley Councils. The Civil Servants are not allowed to align themselves with party politics.[1] Being permanent servants under the Crown, they have to carry out the policy and orders of their Departmental Heads and Ministers. Their promotions from one grade to another are generally mechanical. The rights, privileges and security of service are safeguarded through representative councils. Upto 1917, individuals had to approach the Head of the Department or the treasury, through memorials, for redress of grievances. But in 1919,

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[1] "The ethics of Civil service is detachment and neutrality; for that reason a long tradition, extended in recent years to the defence forces, prohibits a civil servant from a parliamentary candidature; and certain departments, the Minister of Health and Labour, for example, which have special relations with the public, prohibit their officials from candidatures for Local Government bodies." Laski: *Parliamentary Government in England* pp. 338-39.

the benefits of the Whitley Councils were extended to the Civil Service also. In 1917 the Government appointed a committee under the chairmanship of J. H. Whitley to suggest a device to secure co-operation, in private industry, between the employers and the employees. The report of this committee issued in 1917 produced the Whitley Council Plan providing for the establishment of Councils of the representatives of both parties in each industry. The execution of the Plan led to many reforms in the industries. At the insistence of the civil servants association, the Whitley Councils Plan was extended to civil services of the government with a view to "securing the greatest measure of co-operation between the administration, in its capacity as employer, and the general body of staff in matters affecting the department with a view to increased efficiency in the department combined with the well-being of those employed; to provide machinery for dealing with grievances, and generally to bring together the experience and different points of view of the administrative, clerical and manipulative Civil service."[1]

Consequently in each Department of the administration there is a Whitley Council concerned with the general welfare of the members of the staff of that department. The decisions are arrived at by agreement between the two sides and reported to the Head of the Department and became operative. Over and above all the Departmental Whitley Councils is the National Council. There are now more than one million Civil servants of different categories as members of the federations of government employees. Trade unionism has thus crept into the government departments. The system has its merits as well as demerits. There was created the tendency to call strikes to force the government to accede to the demands of the Councils, as some of these civil servants' Councils were associated with industrial trade unions in private industry. Stanley Baldwin's ministry, therefore, passed the Trade Disputes and Trade Union Act of 1927, and Section 5 of this Act not only forbade civil servants to become members of any trade union which allowed membership to non-government employees but also prohibited them from associating themselves with any organisation directly or indirectly associated with any political party. But in 1946 this Act was repealed leaving the civil service organisations free to affiliate not only with outside trade unions but also with any political party.

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[1] Para 4 of the Constitution of the National Council.

The institution of the Whitley Councils in government departments has certainly led to greater contentment among the civil servants. It has produced psychological effects and undoubtedly increased the efficiency in administration.

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10

THE ENGLISH JUDICIARY

Acts of parliament are not self-operative : they have to be applied by men. And application involves interpretation by a Court, since it is a principle of the British Constitution that only express and unambiguous words—perhaps not even these—can deprive the citizen of his title to have the meaning of legislative intention settled by a Court of Law.

—H. J. LASKI

* * *

Where Justice is destroyed by Injustice and Truth by Untruth under the very nose of the Judges who simply look on, all those who preside over the Court are as if dead, not one of them is alive. *Justice* being destroyed shall destroy the *destroyer* ; Justice being protected shall protect the *protector*.

—SWAMI DAYANAND

* * *

It is for this end that the King has been created and elected, that he may do justice to all.

—BRACTON

THE JUDICIAL system of Great Britain is founded on unwritten concepts of the Common Law of which the Rule of Law is the basic principle, and consists of institutions and courts that were founded from time to time without a settled plan and, therefore, formed an entangled mass that needed drastic reforms in the seventies of the nineteenth century.

THE RULE OF LAW

No study of the English judiciary will be intelligible without a clear understanding of the deductions that follow from the fundamental principle[1] of the Rule of Law. The rule secures the supre-

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[1] For the three principles as enunciated by Prof. Dicey see ante, Ch. V.

macy of regular law as against arbitrariness; it establishes the equality of all classes of persons before the law; and, finally, bases the constitution on the ordinary law of the land.

Exceptions to the Rule of Law. The only exceptions to the Rule of Law are: (*i*) *The Crown* under the well-known legal maxim 'the King can do no wrong' which secures personal immunity of the King from criminal prosecutions and from civil actions arising out of torts. If the King does any criminal act, of whatever magnitude, he cannot be brought to trial before any court of law. He may be declared a lunatic and placed under medical treatment, but there is no method known to English law whereby he may be tried before his own courts of law. Similarly, in all actions for recovery of any damages or property, the King enjoys immunity; the remedy to a private citizen lies in petitioning the King who, as a matter of grace but not as a matter of right, award to the aggrieved party whatever His Majesty pleases. (*ii*) *The public officers* enjoy personal immunity from prosecution before a court for any act done in their official capacity. The State is responsible for all official acts of the public officers and the latter are, therefore, not personally responsible before any court. This was established in *Macbeth* v. *Haldimand*. (*iii*) *Judges* are also immune from personal responsibility for any official acts. Even if they act outside their jurisdiction, but not knowingly they enjoy immunity. (*iv*) *Justice of the Peace* are also protected from any proceeding for any official act done by them within their jurisdiction to the same extent, *i. e.*, if they have not acted maliciously.

Rights of citizens deducted from the Rule of Law. The absence of any declaration of rights of the citizens in England is made good, it is asserted, by the Rule of Law. From this Rule follow, as its deductions, the fundamental rights of citizens, which the English Judiciary upholds in giving judgments. These rights are: (1) the Right to Personal Freedom, (2) the Right to Freedom of Speech, and (3) the Right of Public Meeting. Personal freedom of an individual is secured because no one can be arrested except for a definite breach of law, which can be justified in a court of law. And no court would punish an individual but for some definitely proved breach of law, after the accused has been afforded every chance to defend himself. If a government officer arrests a citizen and puts him in prison without trial, any one on behalf of the aggrieved person may apply to a court for *a writ of habeas corpus*, demanding the production of the prisoner's body. A trial will then follow. The right of self-defence

too is provided for according to the Rule of Law, and a citizen can use necessary force in repelling any assault or restraint on him.

Freedom of speech is the other invaluable right secured to Englishmen under the Rule of Law, though in other countries like France, Belgium, etc. a similar right is statutorily guaranteed. In England any person can say or write anything and about every body, subject to the restriction that he will expose himself to the penal law if he says or publishes what he is not legally entitled to say or publish, for example, no one should publish seditious or blasphemous or defamatory matter. England has placed no special restriction on the freedom of the press which is subject to the ordinary law.

Similarly, the right of public meeting results from the liberty of person and of speech. Citizens can assemble in a public meeting and speak out their minds *according to the ordinary law*, unlike in other democracies where constitutional law guarantees a similar right. Unless, therefore, there is imminent danger of breach of peace, and not a mere suspicion, an assembly of persons will be allowed to go on and not declared unlawful, as long as the object of the assembly is lawful and the motives and attitudes of those who constitute the assembly are not inconsistent with what the ordinary law allows.

All persons amenable to the same Courts of Law and the same Code of Law. For the trial of all persons, whether private citizens or government servants, the same courts are in existence. All such trials are conducted in accordance with the ordinary law. Therefore, private citizens can proceed against government servants for any harm or injury caused by the latter to the former in the ordinary courts. As against this in countries like France and Belgium there are different courts called Administrative Courts for the trial of public servants and in these courts administrative law, and not the ordinary law, is applicable.

Declining prestige of the Rule of Law. Recently, however, the apparent advantages of the Rule of Law in England are slowly disappearing for several reasons. Firstly, Parliament has passed certain Acts, like Factory Acts, the Education Acts, etc., which give judicial or quasi-judicial powers to officials, thus diminishing the authority of Law Courts. Cases arising under these Acts are outside the jurisdiction of ordinary Courts, and are decided departmentally by officials authorised for that purpose. Secondly, certain public bodies like trade unions, are exhibiting distrust of Law Courts in regard to their own rules to which their members are subject. These unions

demand that their rules of discipline must not be interfered with by Courts, even if the rules tend to restrict the liberty of the individual members. Thirdly, there are conscientious objectors who try to justify some of their actions which are in form against law, but are directed towards the betterment of society. Fourthly, delegated legislation, Orders-in-Councils and Provisional Orders, all of which are not really law, cannot be questioned in regard to their legality, before Law courts. Thus the prestige of the Rule of Law as it now operates in England is slowly declining.

Other principles of the English Judiciary. There are some other principles, besides the Rule of Law, of the English judicial system, which impart to it a peculiarity all its own. The whole judicial system has been so organised as to bring the course of justice within easy reach of all. There are different grades of courts, *e.g.*, Civil and Criminal. And in each of these there are different degrees of courts, beginning at the bottom with the smallest courts, then the next higher appellate courts, and finally the High Court.

Impartiality and independence of the judges. Then there is the principle of independence and impartiality of the judges, their freedom from executive control and interference. This enables justice to be blind, *i.e.*, to be imparted without fear or favour. As Dryden has said, "Justice is blind, he knows nobody." Addison supports this when he says: "Justice discards party, friendship, and kindred, and is therefore represented as blind." Such justice can be imparted only when the judges are secure in their posts and can be removed only when a very strong case has been most clearly established against them. Their salaries cannot be reduced during their term of office; they can be removed by the King on an address presented by both Houses of Parliament. The result has been, as Laski points out, that "Ever since the Revolution of 1688 the independence and incorruptibility of the British judges has been beyond dispute in this country. There have been harsh judges and stupid judges; there have been cynics on the Bench and occasional figure, like Mr. Justice Grantham, whose prejudice in a case of political flavour was so marked as to be matter for serious concern. There have been judges—since there is still no retiring age—who have remained on the Court long after it was painfully apparent to the interested public that their powers were inadequate to their function. It is nevertheless true to say that, with the single exception of Lord Macclesfield, the integrity of no English judge has been open to suspicion after his appointment to the Bench

at least since the Act of Settlement. Even the exhibition of prejudice of an open kind must be regarded as minimal in character; for not half a dozen times in that period has judicial conduct been the subject of debate in Parliament."[1]

The Jury System in England. Another feature of the English Judiciary is the *Jury System* which traces its origin to the early part of the thirteenth century. Early jurymen were mere recognitors who decided cases simply on their own knowledge or from tradition, and not upon evidence tendered before them as is now the case. Later, jurors changed from witnesses into judges of facts. In the sixteenth century the jurymen were even fined or imprisoned for giving wrong verdict. The immunity of juries was, however, established in 1670 by the decision of Chief Justice Vaughan in *Bushell's Case*. The jury system now extends to some civil and all criminal cases. A jury consists of twelve persons whose main duty is that of fact finding and giving its verdict for the guidance of the Court. Till 1933, there were two juries, the Grand Jury and the Petty Jury, in a criminal case; in that year the Grand Jury (which consisted of 12 to 23 members) was abolished. At present, therefore, there is only one jury (Petty Jury) consisting of twelve persons. Wm. Pulteney, the Earl of Bath, thus sang the praise of the jury system:

Twelve good honest men shall decide in our cause,
And be judges of fact, though not judges of laws.

The jury hears the whole case, and then declares whether in its opinion (their verdict must be unanimous if it is to bind a judge) the accused is guilty or not guilty.

Brief History of the Judiciary. In the earliest days of English history—in the Saxon days—the administration of justice in the countryside was independent of the control of the monarchs, due to the latter's comparative weakness. "The courts of the township, hundred, and shire were beyond the direct reach of the Crown." It was only after the Norman conquest had quelled disorder and made itself secure, that the Norman King "undertook to make his power felt in all parts of the realm." In the beginning, the King tried to interfere, now and then, with the work of several local courts. When Henry I ascended the throne he seriously took up the task of centralising and systematizing the administration of justice. The first step in this direction was taken by sending itinerant judges—the members of the *Curia*

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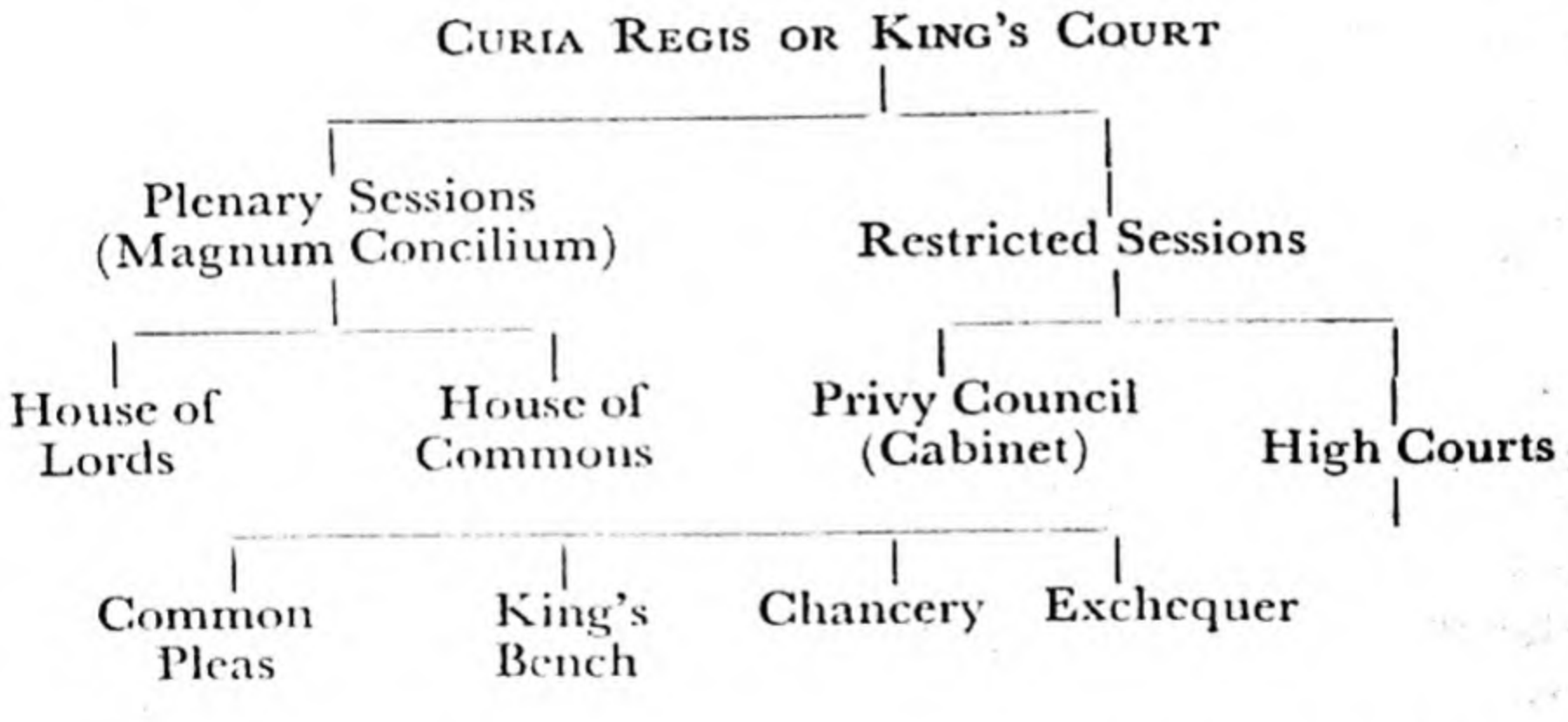
[1] Laski. *Parliamentary Government in England*, p. 361.

Regis or King's Court—to go "on circuit", to administer justice now and then, and thus afford the King an opportunity to ascertain the actual conditions in the country. If an important case came up before them it was transmitted to the Curia. When the number of such cases increased, and, consequently, it became difficult for the *Curia* to impart justice satisfactorily, along with the administrative work it had to share with the King, it was found necessary to divide the functions, first into two and then into three branches, each placed under the charge of a distinct set of persons. Magnum Concilium continued to be the highest authority in all matters including judicial, and, later, when it transformed itself into Parliament its judicial function continued without any curtailment. In this way developed a number of judicial bodies, besides Parliament, which imparted justice according to the nature of the cases. This development may be illustrated thus:



The history and the working of the House of Lords and the House of Commons have already been described.

The Exchequer formed the financial limb of the Curia Regis and dealt with all cases relating to revenues and national finance. This separation was finally brought about towards the end of the twelfth century.

The Court of King's Bench was instituted as a separate permanent court for the first time in 1178, by Henry II. It consisted of five judges (members of the Curia). It heard complaints of the people and the final appeals from its decisions were taken to the King himself.

The Magna Carta provided for the institution of the *Court of Common Pleas* to hear all disputes arising between the King's subjects, at stated intervals.

All the three courts, mentioned above, were offshoots of the Curia Regis, though the King still reserved to himself the final judicial power. During the time of Henry III, separate judges were assigned to each of these courts. 'The only thing lacking to perfect the centralisation was a greater uniformity of organisation and a less haphazard distribution of jurisdiction among the various courts.' It was in order to remove this defect that Parliament passed the *Judicature Act* of 1873 which in other ways, also, reformed the whole judicial system of England, and united the three courts into one. By another Act, passed in 1881, they were "merged into one division of the High Court."

The Court of Chancery originated about the end of the thirteenth century. When people could not get justice at the hands of Common Law Courts, they appealed to the King who, in his turn, referred these petitions to the Chancellor. In this way, the Chancellor became, in course of time, a distinct court by himself. The Act of 1873 formed the Court of Chancery as a separate division of the High Court.

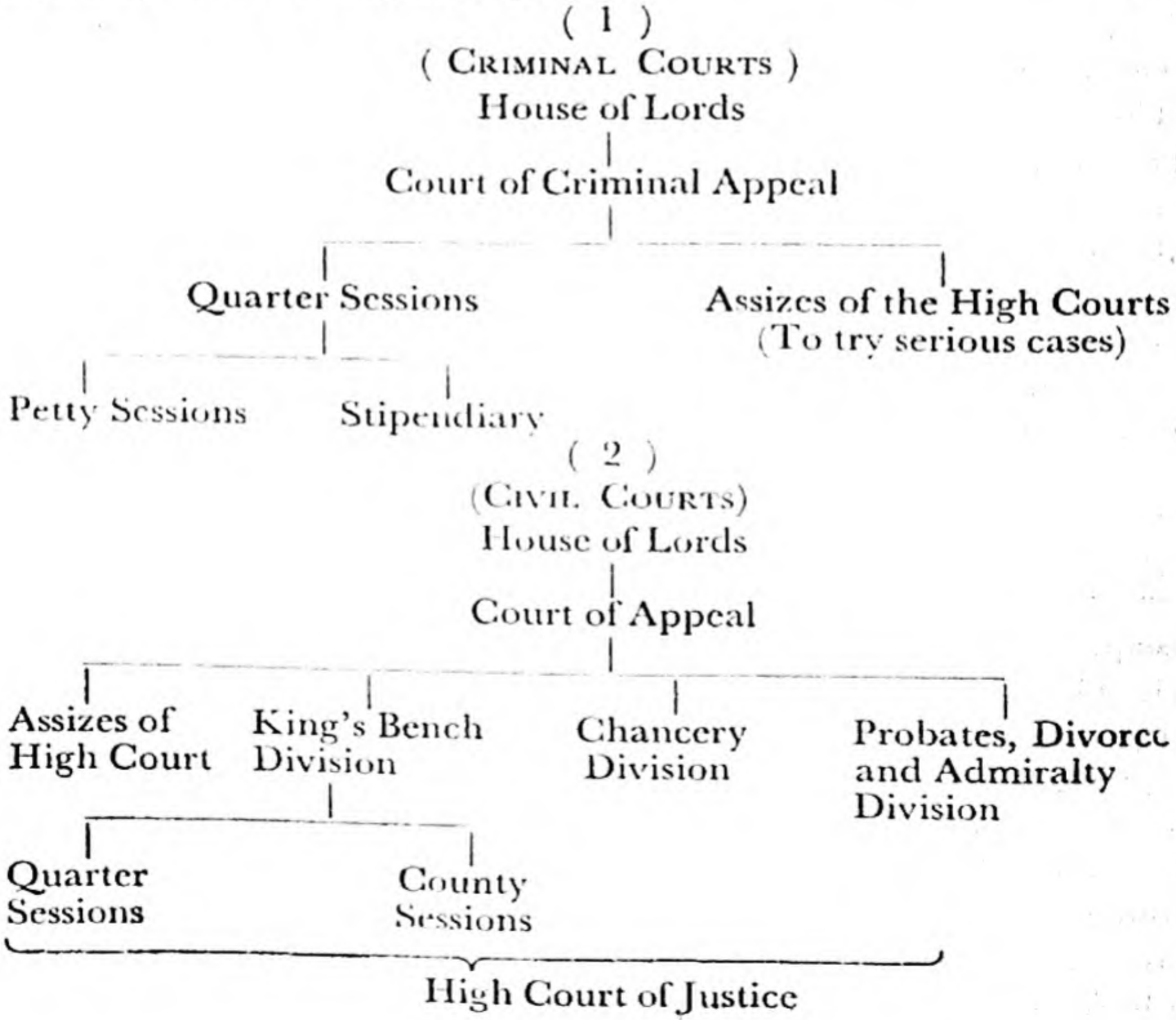
Though all the above courts emanated from, or were offshoots of, the King's Council, the latter still continued to exercise judical powers in all important cases, for the former exercising only delegated authority did not usurp the powers of the latter nor did they become absolutely independent. The King as the fountain-head of justice exercised unfettered authority in judicial matters. When Henry VII ascended the throne, he appointed a committee of the Council to exercise vast judicial powers in order to restore peace in the country. It became known as the *Court of Star Chamber* and was used definitely for political purpose. Later, it was known as the High Commission Court, but due to the severity of punishments awarded by it and its consequent unpopularity it was abolished by the Long Parliament in 1641. This did not, however, take away from the King the right to hear petitions from his subjects, particularly from outside the United Kingdom. This led to the establishment of the *Judicial Committee of the Privy Council,* the highest court of appeal in the British Empire and is the judicial link of the various parts of the Empire. It acts as a supreme court of appeal from the courts of the dominions (some dominions having stopped appeals to the Privy Council, as the Union of South Africa), colonies and protectorates. Its jurisdiction is the

ancient jurisdiction of the King-in-Council to hear appeals from the overseas dependencies, made statutory in 1833 by the Judicial Committee Act subsequently amended. It is composed of all members of the Privy Council who have held high judicial office including the seven Lords of Appeal. It is presided over by the Lord Chancellor. The sovereign gives the judgment himself on the report of the Committee. While the decisions of the committee are binding on all courts of the Empire outside the United Kingdom in matters *pari materia*, the committee is not absolutely bound by its own decisions.

Several other courts also came into existence, particularly in the nineteenth century, *e. g.*, the *Court of Admiralty* to hear cases involving injuries done at sea, and ecclesiastical courts exercising jurisdiction in all matters relating to the State Church.

It was to centralise the whole judicial system and give it uniformity that Parliament reorganised the judiciary between 1873 and 1879.

The present judicial system of the United Kingdom may be illustrated by the following three graphs :



(3)

COURTS FOR SPECIAL CASES

Judicial Committee of the Privy Council

Prize Courts (for war time)	Ecclesiastical Courts	Supreme Courts for the Dominions, and Colonies

It will thus be seen that the House of Lords is the highest judicial body and the final court of appeal in England, both for civil and criminal cases. When the House sits in this capacity, the Lord Chancellor presides, and Lords of Appeal-in-Ordinary and Peers who hold or have held high judicial offices, constitute the sitting of the House even though other Peers do not actually attend it. For hearing appeals from the Dominions and other Colonies beyond the seas, the Judicial Committee of the Privy Council is the highest court in the Empire.[1] The Lord Chancellor is a member of this Committee which includes generally the same Lords of Appeal-in-Ordinary as the House of Lords (while sitting as a court of appeal) and at least one Judge of the Dominion or other part of the Empire from which the appeal comes.

The Court of Appeal consists of the Master of the Rolls and five other Lords Judges. It hears appeals both on questions of fact and law. The three presidents of the three branches of the High Court are also its members.

The Chancery Division is presided over by the Chancellor and has five other judges. *The King's Bench Division* has fifteen judges and the *Probates Court* has two judges. Thus twenty-three judges constitute the High Court which is divided into the above three sections for the sake of convenience, each section hearing cases falling within its specified jurisdiction. But only one judge generally hears a case and hence the High Court has "the effective capacity of twenty-three courts."

The above description of the highest court of appeal shows that in England the *Lord Chancellor* is the most important figure in the whole judicial system, being president *ipso facto* of most of the tribunals. Besides, he is always a member of the Cabinet of the day and is thus a

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[1] India on becoming Republic has ceased to be subject to the jurisdiction of the Privy Council. Some of the Dominions have also stopped appeals to the Privy Council.

singular political officer of great legal knowledge. He may be considered to be a Minister of Civil Justice, for he comes into office and goes out of it with the Cabinet. He is decidedly a party-man though in his official acts as a judge he always sticks to the letter of the law.

As regards lower courts, there are the *County Courts* which generally hear cases involving any sum upto £ 50, though some of them have been empowered to try cases involving contracts of the value of £ 100. In cases the subject-matter of which exceeds £ 20, appeal can be made to the High Court. In all matters of above £ 50 the High Court is the original court.

The Assizes are circuit courts held by judges who go on circuit three or four times a year, visiting all the county and assize towns and hearing and deciding civil and criminal cases occuring in the district. The whole country is divided, for this purpose, into eight districts or circuits. Barristers also accompany the judges going on circuit, in order to be available for appearing as counsels. These courts generally try cases involving serious offences.

All other cases of a less serious nature are tried by the Court of *Quarter Sessions*. This court is composed of two or more justices of the peace for the county concerned. Important boroughs have their own courts of Quarter Sessions.

As is the case in India, certain "country gentlemen of high standing" in their respective localities are made honorary judges in England and are called *Justices of the Peace*. They receive no pay and usually hold their honorary offices for life. They hear all petty cases within their localities, doing justice "with great wisdom and public spirit, and during most periods with extraordinary moderation, industry, and effectiveness."

Trial by jury is common in all criminal cases. Although in civil cases, there is provision for a jury trial, the parties do not call for it in minor civil cases. But in cases of more than £ 20 value a jury of five is generally summoned. The judges are appointed for life and their office is independent and secure. The courts in England attach the greatest importance to common law of the land, derived from customs and usages. This accounts for the simplification of the English judicial system. The English Judiciary is thus very independent and free from political influences. It is important to note that the principles on which the English Judiciary is founded have been adopted, in all parts of the world wherever the English have ever ruled. Principles of British Jurisprudence have been adopted in India also.

Strict justice is the sovereign guide
That o'er our actions should preside.
This queen of virtues is confessed
To regulate and bind the rest.
Thrice happy if you can find
Her equal balance poise your mind:
All different graces will soon enter,
Like lines concurrent to the centre.

Prior—*Conversation* 29.

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11

ENGLISH LOCAL GOVERNMENT

Local assemblies of citizens constitute the strength of free nations. Town meetings are to liberty what primary schools are to science; they bring it within the people's reach; they teach men how to use and how to enjoy it. A nation may establish a system of free government, but without the spirit of municipal institutions it cannot have the spirit of liberty.

* * *

—DE TOCQUEILLE

God gave all men all earth to love,
But since our hearts are small,
Ordained for each one spot should prove
Beloved our all.

—RUDYARD KIPLING

Object of Local Government. Local Government is a compromise between free progress of each individual and social control, and between peace and development. It "falls into the same category as such devices as Federalism and Proportional Representation, they are safeguards against the tyranny of the wholesale herd, levelling standardising, and conventional, hating and destroying original individuals and groups."[1] By participating in local government bodies, people learn the art of self-government; they can have practical training in citizenship; this training, in many cases, leads to the working of higher democracy on a national level. The real purpose of Local Governments is to make the country a better place to live in. Without them civic consciousness or Civicism will be absolutely absent and the nation will be more or less in a 'State of Nature' as Hobbes depicts it. It is recognised on all hands that the better local administration is, be it in a village, parish, commune, municipality, county, district, or canton, the more prosperous, healthier and happier the inhabitants are. It is because of this fact that in the civilised states of to-day, barring India, the largest part of administration is carried on not by the governmental machinery

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[1] Herman Finer, *English Local Government* (1933), p. 4.

in the capital cities but by the local authorities or institutions extending throughout the length and breadth of those countries. These are the institutions which form the strength of a free nation.

History of English Local Government. The statement of Sir Sydney Webb that " Local Government (is)..as old as the hills"[1] is fully applicable to local self-government in England which is the mother of municipal democracy in the world. Of all the countries of the world English municipal institutions have the longest and most continuous history. Further "the English system of local government is the result of a long historical evolution, for the most part unguided and unplanned."[2] In Saxon times there were shires, hundreds, townships and boroughs, which after the Norman conquest became counties, extinct, manners, and chartered municipalities respectively. In the meantime parish came into being and virtually took the place of the old township. Originally it was intended to look after church affairs. By the close of the middle ages or even practically of the eighteenth century, only the county, the borough and the parish survived. The county was administered by the justices of the peace and the borough by its freemen. The Tudor and Stuart despotism did not affect the democratic constitution of the boroughs and parishes where the freemen and ratepayers continued to choose their officials. In the latter part of the eighteenth century the Industrial Revolution changed the whole situation. The population began to shift to the industrial towns and the problem of town planning, sanitation, education, poor relief, etc., in the towns became acute. Parliament did not replace the old authorities but created new ones, such as local improvement districts to look after sanitation and public utilities, and the poor law unions, throughout the country. This resulted in chaos and overlapping of local authorities, so much so that in 1883 their number was estimated at twenty-seven thousand.

Reform of Local Government in the XIX Century. Owing to these and other circumstances and difficulties, particularly the rise of the Liberal Movement, Parliament undertook the task of remodelling and reforming the local government institutions. The first heroic measure was the Municipal Corporations Act of 1885 which gave the English boroughs (cities) the general scheme of local government which continues to the present day almost unchanged. The Local

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[1] John Mathai, Preface to the '*Village Government in British India*', (1915) p XIV.
[2] Munro, *Governments of Europe*, Edition 1954, p. 273.

Government Act 1888 reorganised county administration and vested in it the powers theretofore exercised by the justices of peace. Further, the District and Parish Councils Act of 1894 swept away most of the petty special districts.

Present system, the result of evolution. Thus we see that the present system of local government of England is not the result of a revolution or a single Act of Parliament but of a series of Acts passed since the Anglo-Saxon times. But the policy at all times had been the same, that is, retaining and improving the local autonomy in the sphere of administration. In this respect it is a strange contrast to the continental municipal government where there is administrative centralisation. Furthermore, "the history of the English city as well as that of the nation, is characterised by instances whose remedies were sought through pressure of public opinion upon the representatives; in contrast to the American distrust of officials and remedy in law."[1]

Present divisions of local government in England. At present there are five main areas of local government in England. They are the parish, the rural district, the urban district, the borough and the county. It must be noted in this connection that "the English Local Government is legal, not prerogative. No local body, no local official, can act without definite legal authority. . Further, English Local Government is independent, not hierarchical. Generally speaking, each organ is free to act as it pleases within its authority provided that it acts *bona fide*."[2] There are at present the following five categories of local government areas.

1. Rural parishes. The smallest area forming part of a rural district is the parish. There are different kinds of parishes: civil, ecclesiastical and land tax. Only the civil parish is connected with the local government. Civil parishes are also divided into urban and rural; the former has merged its administration into that of the Urban District Council, but the latter remains a complete unit with its own form of government. The Rural Parishes vary greatly in size and population. A Rural Parish having more than 100 inhabitants has ordinarily a Parish Council. But in case it has less than 100 inhabitants, a council can be set up with the express sanction of the county council, which can also group together several of such parishes under one parish. A Parish Council can have not fewer than 5 members and not more than

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[1] G. S. Griffith, *Modern Development of City Government*, Vol. II (1927), p. 430.

[2] Edward Jenks, *Outline of English Local Government*, (1917) p. 14.

15. Its term is one year and election takes place at the annual parish meeting in March. Voting is by show of hands. At least three meetings of the council must be held every year. The powers of the Parish Councils are varied and fairly comprehensive,[1] but these are under the control of two higher authorities, namely, the Rural District Council and the County Council. They are entrusted with functions of a general nature, for instance, providing a parish room, chest and books. They act as minor Education Authority, and may provide public works, recreation grounds and allotments. In the absence of a Parish Council, parish meetings function. Parish accounts are annually audited by District Auditors of the Ministry of Health. Parish rates are usually limited to 3d. in the £.

2. Rural districts. All rural parishes are grouped into rural districts (numbering at present 475), which have their own representative councils. These District Councils consist of representatives of parish, each parish of 300 inhabitants sending one councillor. These councillors are elected for 3 years, one-third retiring every year. The election is by ballot. The Chairman of the Council is also the Justice of the Peace. He is elected by the councillors from amongst themselves or from outside. With the sanction of the County Council the rural district council can have its complete election after three years instead of one-third annually. The council meets at least once a month, other meetings being called according to necessity. Most of the work of the council is done by committees which are freer than the committees of Borough Councils. There is a medical officer, an inspector of nuisances, a surveyor, a clerk, a treasurer and a collector in every district. The activities of councils vary greatly. The Rural District Councils deal with certain matters of sanitation, water-supply and public health. They look after the management of minor roads; they grant certain licence and have an assortment of miscellaneous functions. Their local authority has been decreasing in importance and will decrease further as England becomes more industrialised. If the council neglects the minimum amount of activity allotted to it by the Central Government, the latter can intervene by reprimanding, by imposing a financial check, and if necessary by recourse to law. The sphere of the activity of the District Council is very wide, if only it pleases to put into force the Adoptive Acts to line out schemes for local improvements and to profit by the finances which can be procured from the Govern-

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[1] Kate Rosenberg, *How the Ratepayer is Governed*, (1930), p. 28-29.

ment under certain conditions.

3. Urban districts. Whenever there is a growth of an administrative county due to increase in population leading to special needs of the people of the area regarding such matters as sanitation, water-supply, public health, etc., the county council forms that area into an urban district. There are at present over 570 urban districts, each with an urban district council. The Urban District Council is similar, genrally speaking, in constitution and powers to the Rural District Council; but the latter manages a considerably greater area than the Urban District. An Urban District has a council made up of at least one councillor for each parish within it. The council has a variety of local powers in matters of minor highways, housing, sanitation, public health, and licensing. An Urban District is, like a Borough, a thickly populated area but has not been given a borough character by Municipal Corporation Act. The framework of the District Council is similar to that of a borough. All boroughs are *ipso facto* urban districts.

4. Counties. All these Urban and Rural Districts make up a County which is the largest local government unit. The counties are of two types, historical and administrative. The historical or geographical counties have their ancient boundaries, and are areas of judicial administration. At present, administrative counties number sixty-two. They form constituencies for parliamentary elections. Each of these counties has a lord lieutenant, an honorary officer and a sheriff whose duties are more or less perfunctory. None of the 62 areas has a council or any other body to administer its affairs. The Administrative County is 'an incorporated territory.' It is administered by a County Council consisting of a Chairman, Alderman and Councillors. The Councillors are elected, and for the purpose of election the whole county is divided into electoral districts each returning one member. Naturally then, the number of members varies from county to county on population basis. These Councillors elect (either from their own ranks or from outside) one-third of their total number as Aldermen and when Aldermen are elected from among the ranks of Councillors the vacancies thus caused in the council are filled up in the usual manner. The normal term of the council is 3 years and that of the Aldermen 6 years, half of the latter retiring every three years. Both the Councillors and Aldermen have the same voting powers. They sit together to elect a Chairman either from among themselves or from outside their ranks. The county council meets at least four times a year. Its powers are wide and numerous. It supervises the work of the rural district councils. It is

responsible for the maintenance of main roads and bridges ; asylums, reformatories, industrial schools, police and all the county buildings. It regulates the old age pensions, and is the sole authority in matters of education in the county. It is authorised to lay an exact county rate or tax. The major part of these multifarious duties is carried through the well-known and ideal committee system of England. The detailed work of the area is entrusted to these standing committees, one for each service. There are twelve standing committees each entrusted with the task of looking after the working of functions like finance, education, public assistance, housing, agriculture, etc. Each council may also appoint other committees for other puposes, like highways and bridges, weights and measures, etc. Furthermore, the permanent and paid officials (including a clerk, a treasurer, a surveyor, a director of education, an inspector of weights and measures, and a health officer) appointed on non-party basis, form another group or body to carry on the routine work of the county. These officials are appointed by the council itself and do not come within the jurisdiction of the civil service. The council can remove any one of these permanent officials with the exception of a few, for instance, the health officer. "The efficiency of county administration in England contrasts sharply with its notorious inefficiency and masterfulness in many parts of the United States. The reason is partly to be found in the fact that the administrative work of the English County is entrusted to men who are chosen for their competence and do not have to play politics in order to hold their jobs from year to year."[1]

5. Urban boroughs. Of all the urban areas the most important is the borough. Each borough has its charter which is obtained after a regular and lengthy procedure. The steps taken in obtaining a borough charter are :

(1) A petition from any number of inhabitants of an Urban District or by the Urban District Council itself.

(2) Due notice issued to the public through publication in the London Gazette or in any other manner.

(3) A period of one month is given to file a counter-petition.

(4) A commissioner investigates and reports the findings.

(5) These findings are referred to the Ministry of Health for its advice or comments.

(6) A draft-charter, scheme and map are prepared.

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[1] W. B. Munro, *The Governments of Europe*, p. 294.

(7) The approval of these by the Privy Council is then necessary.

(8) In certain cases, especially when a counter-petition is filed, Parliamentary confirmation is required.

The charter is desired for there are various advantages which go with borough charters. 'The borough is the primate among areas of English local government....It is said that the people take more interest in self-government when they are organised under a borough charter; the council is larger, and more of the citizens can share in the conduct of local affairs. A borough has an advantage over an urban district in that its council can adopt bye-laws under a general authority known as 'the good rule and government' power, or, as they would say in America, 'the police force.' A borough is a municipal corporation with perpetual succession, a corporate seal, a town hall, a coat-of-arms, and other glittering appertenances. Much historic glamour attaches to a borough—but none at all to an Urban district."[1] There are 392 boroughs varying in sizes from a small township with a population of a few thousand to large industrial communities.

Administration of a borough. The borough acts through a Town Council. The powers of the borough are derived from common law, Municipal Corporation Acts and statutes thereof, and from local or private Acts of Parliament. The acquisition of power from the last source is very cumbrous and lengthy, and involves waste of time and money. The borough council also derives powers from orders of certain central departments which are authorised by Parliament for the purpose. These orders cause variations in the powers of different municipalities. The Borough councillors are elected by popular vote for three years. For the purpose of elections boroughs are divided into wards. Election is by secret ballot and is expected to be without party designations. Yet party system is reflected both in the council and in elections. The councillors then choose one-third of their total number as aldermen for a six-year term from among themselves or from outside, half the aldermen retiring every three years. The councillors and aldermen have equal powers but the latter exert much influence in the shaping of policy by virtue of their experience. The aldermen and councillors choose a mayor who is required to possess generosity, affability, and a certain sense of proportion. He is elected for one year and is eligible for re-election, but as the post is regarded as one of honour generally a new man is elected. He is the titular head of the city and the premier

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[1] W. B. Munro, *Governments of European Cities*, p. 30.

citizen; he represents the city on ceremonial occasions. He is not the chief executive head. "He is not elected to bring a new policy, to represent a party, or to dominate the council but to preside in its meetings and to take the lead in carrying its policy into effect." As Dr. Shaw aptly remarks: "He is a man who has served his town (city) with ability and zeal as councillor and alderman."[1] He makes no appointment save that of a borough auditor and a temporary town-clerk. He has no special share in the framing of the budget. He has two votes. The council performs its functions through standing committees, of statutory and optional nature. Every municipality has from 6 to 12 such committees. There is no statutory strength fixed for the committees; but it is limited by the standing orders. There are special committees also appointed for specific purposes. There are joint committees in which members of the borough council and county council function together. These committees play a very important part as compared with the committees of other countries. They are, however, advisory bodies and have no final authority, although the whole administrative work of the municipality is performed by them. In case of dispute between the committees the council gives its decision. There is no system of checks and balances.

Powers of town council. The town council has the authority for passing bye-laws some of which require the approval of some central department. The council is the chief authority in matters of finance. It is the custodian of the borough funds. There are mandatory expenses over which the council has control (*e. g.*, compilation of voters' register); those payments which the council has to make (*e. g.*, interest charges on the debts); those for which the town council requires the approval of the Ministry of Health. In case the borough does not have sufficient funds to meet the expenses, it is permitted to levy a local tax to raise the required sum. The council levies general rates throughout the whole borough. Every year all the different committees in consultation with the permanent officials submit an estimate of their annual expenses. They are then placed before the finance committee which shapes and alters them in the form of a budget which is forwarded to the council where only a simple majority is required to get it passed. The right to borrow money is given by Parliament on individual merits of the borough and even then the central government lays down rules of procedure for the loans. The administrative work

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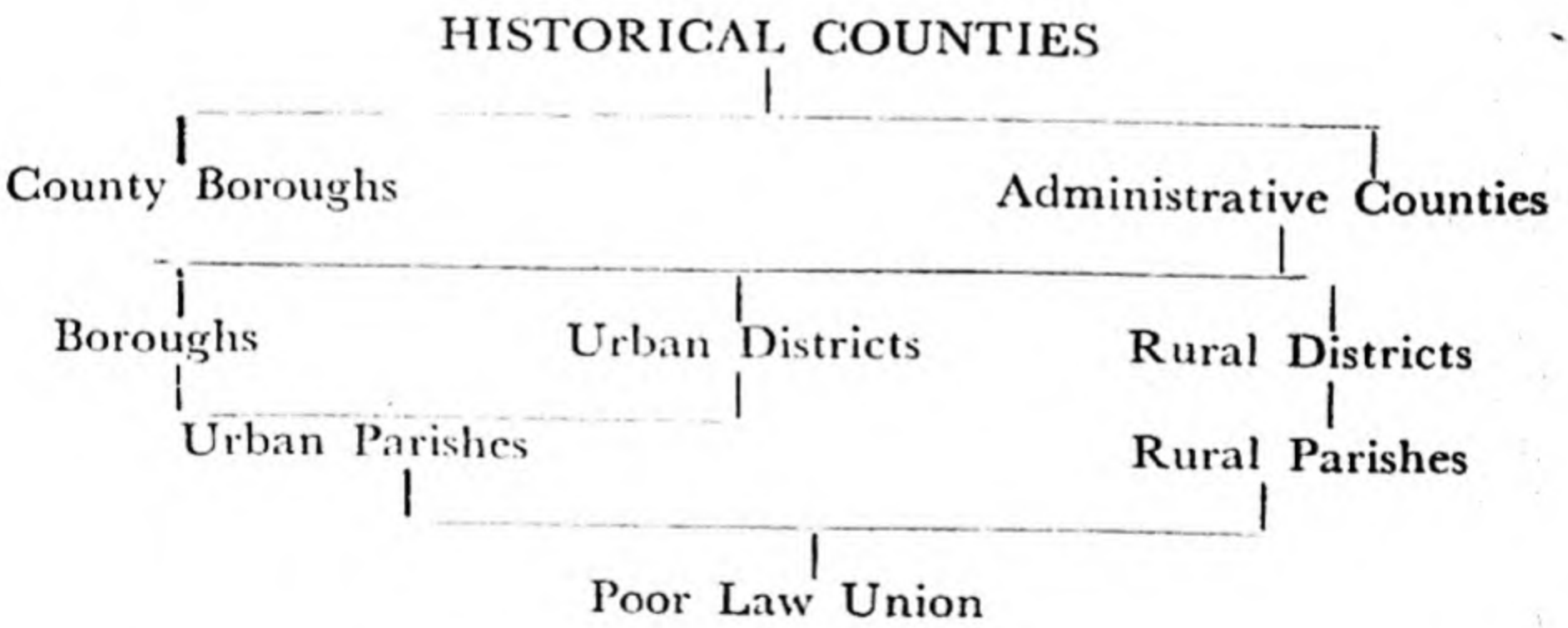
[1] Dr. Shaw, *Municipal Government in Great Britain*, pp. 53-54.

of the council includes building of roads, management of water supply, public health, provision of recreation, police and fire protection, maintenance of parks and public buildings, supervision of school buildings, the grant of licences, the care of the poor, etc. It has no control over poor-relief, liquor licenses, police and schools. The council can also accept gifts and endowments for public purposes. It is a local sanitary authority. It maintains and constructs workers' houses, regulates trade and appoints high officials.

Administrative Counties. When a borough or city has sufficient population (say 50,000) it is generally removed from the county and becomes an administrative county by itself. It is then constituted into a county borough with its council, having almost the same powers, functions and organisation as the borough.

Thus we see that there is a labyrinth of local authorities in England, but they are not hierarchical as in France. The parish, for instance, has not to suffer from the autocracy or tyranny of an hierarchy of officials but only of the one central government. The cumbrous or difficult system of local government in England can be best illustrated by the following graph:



CENTRAL CONTROL OVER LOCAL GOVERNMENT IN ENGLAND

In England the administration is vested in the local authorities, while the general control is left with the central government. The administrative functions of the local bodies are supervised and controlled by the various central departments at Whitehall. This does not mean that there is hostility in the functions and purposes of these two governments. Their final purpose is the same, *viz.*, to administer the country

in the best possible way and provide facilities and comforts to the inhabitants. Both act in harmony.

Nature of central control over local government. The English system of central control over the local bodies is halfway house or a compromise between the rigid Continental system and the flexible American system. As compared with the Continental municipalities, the English ones have greater freedom from central legislative control, but are subject to larger amount of administrative interference. The English city or borough is vested with large powers but is not left free in the execution thereof from the supervision of one or other central department at Whitehall. The English local governments are non-hierarchical in character as opposed to the hierarchical Continental type, where, for instance in France, there is a long line of authorities almost like the Hindu gods, punching and controlling the poor smallest unit of local government, the Commune. Further, to quote the words of Professor W. B. Munro. 'England was the first country to succeed in reconciling a decentralised systems of municipal government with order and efficiency in local administration.[1] The comparison can best be illustrated in the words of the authors of the Indian Statutory Commission Report who say, "system of Local Self-Government fall into one or other of two well-defined types, which we may call the British and Continental. In the former, Government is decentralised. Local bodies, with wills of their own, exist. They initiate and carry out their own policies, subject only to such powers of direction and control as are retained by the Central Government. They appoint, subject, it may be, to regulations as to qualifications, their own staff, and raise in the main their own revenue. They form, in fact, a detached system. They are not a mere subordinate part of the governmental machinery. Under the Continental system, on the other hand, Government is deconcentrated. The principal local official is not the servant of the elected representatives of the locality, but is essentially an official of the central Government, sent down to a particular locality to carry out part of the work of the Central Government.... The will that operates in the sphere of local administration is that of the Central Government, not that of the people of the locality."[2]

In the United States of America which has a federal and written

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[1] Munro, *The Governments of European Cities*, p. 1.

[2] *The Indian Statutory Commission Report*, Vol. I, p. 301.

constitution as opposed to the unitary and largely unwritten constitution of England where the supremacy of Parliament prevails, there is greater freedom to the local bodies. The American cities are subject to the legislative control of the Federal or National Government but within the administrative limits they are free to act as they please. There is anarchy of local autonomy. The American Local Government is in a transitional or experimental stage. Plans are introduced and sooner or later discarded and made obsolete. This difference exists because "the people of the United States distrust their Government and have restricted its power; the Government of the United Kingdom has distrusted its people and has been somewhat loath to increase the sphere of popular participation."[1]

Central Control in the Administration of Poor Laws and Finances. "In no part of Local Government has central control been made so close as in the Poor Laws"[2] and these are under the direction of the Ministry of Health. Naturally, then it exerts greater power and influence on Local Government than any other central department but not greater than the Ministry of Interior in France. But its function is to supervise and guide and not to initiate or administer. As Professor Munro says: "It is intended to be the balance wheel, not the engine, of local administration. It is not the Ministry's function to devise machinery, but to see that it is driven smoothly by the town council or other local authorities."[3] The Ministry has power of legislation in matters of public health, poor law relief, sanitation, boundaries and of creating new administrative units. It acts as an agent of Parliament and its powers can be suspended by the same authority. It has the power of annulling bye-laws passed by the local authorities but in actual practice it does so only where a bye-law is against national Statute. It advises both Parliament and local bodies in matters of administration and finance. It also serves as an appellate body for hearing protests of individuals against the decisions of local magnates. The Ministry has large financial powers. It has power of approving loans. It is the sanctioning authority of loans for all services except those falling within the jurisdiction of the Ministry of Transport. "There is a good reason," says a Minister of Health, "for the concentration of the power to sanction loans in one department, be-

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[1] E. S. Griffith, *Modern Development of City Government* (1927), p. 431.
[2] W. I. Jenning, *Local Government Law*, p. 157.
[3] W. B. Murno, *Government of European Cities*, p. 58.

cause that is the only way in which the whole financial position of a local authority can be effectively brought under view." The Ministry is also authorised to get from every Borough its annual expenditure and disbursement as prescribed by the former. As for grants-in-aid the control is very effective as will be discussed later in this chapter. Thus we see that 'So close is the relation between the Ministry of Health and a local authority that many questions are submitted to the Minister over which he has no legal control. . . . the action of the authority. . may be on the wrong side of the law, but it is on the right side of the Minister."[1]

The Board of Trade is to gather and publish commercial information. It is to assist trade and commerce and to develop water-power and energy. It has general supervision over gas-supply and it controls weights and measures. The Ministry of Transport deals with electric tram-cars and railways, electric lighting facilities, ferries, docks, or piers. The Home Office supervises pensions, juvenile courts, excise, police, morals, registration, election, factories and mines. The supervision of police is the main function. There are other departments of the central government, for example, the Board of Agriculture, the Board of Education, which also control one or other branches of local administration.

Parliamentary control. The British Parliament exercises great control over local units. The central departments are created by statutes for the efficiency of service coming within their jurisdiction, for instance: 'There shall be established a Board of Education charged with the superintendence of matters relating to education in England and Wales.'[2] The central Government is responsible for applying and carrying out laws by issuing rules, orders and regulations. Each department at Whitehall has a large number of officials to investigate and impart their scientific researches to the local bodies. There are consultative committees, *e.g.*, the Tuberculosis work of the Ministry of Health. Parliament grants powers to the local authorities through Provincial and Special Orders, and Private Bills. The approval of central Government is indispensable in cases of alteration of areas of local bodies, and enacting bye-laws and creating new administrative schemes. The House of Commons prescribes the qualifications and tenure of local government officials because the communities do not

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[1] W. I. Jenning, *Local Government Law*, pp. 196-197.

[2] The Act of 1899—Section I.

trust local organs in this respect. Parliament has power of action in case of default on the part of a borough and can invoke control by the law courts, sometimes by the issuing of a writ of mandamus by the High Court. Some of the central departments have the power of determining questions arising out of the local application of the statute either in the case of wrong interpretation or violation. The central Government has the power of making inquiries into local affairs; publishing reports and auditing the accounts and sanctioning loans to the local government authorities. Finally, the growth of central supervision has been facilitated by the practice of making grants-in-aid from the national treasury. These grants are given for a variety of purposes. Sir Sidney Webb says that by this kind of relation they have a new species of administrative hierarchy "which produces results in a remarkable combination of liberty and efficiency, on the whole preferable to the achievements of either the bureaucratic system of France or Germany."[1] Some people are of opinion that by this method central Government is buying from local authorities a right to instruct, supervise, audit, criticise and control.

Of course, "the central Government is not unnecessarily meddlesome; it respects the freedom of the local governing bodies and would prefer to see this exercised properly without the need to intervene."[2] And so long as the borough councils keep within their legal powers they are free from central interference, and when they unconsciously exceed their authority, "the uplifted hand of the national government ought to be welcomed not resented."[3] Yet the English nation, as a whole, criticises and grudges this central control. It is maintained and to a great extent aptly maintained that the local representatives in the local council are better judges of the local needs and requirements at a particular time than the representatives in the House of Commons in London. During the last fifty years or so many plans for decentralisation or devolution have been chalked out but without producing any drastic change. In 1898, the County Councils Association proposed a scheme of transferring some subjects to the County Councils. Another important measure was the Speaker's Transitional Plan recommended through the Devolution Conference of 1920 that there must be subordinate legislatures throughout Great Britain on practically

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[1] W. B. Munro, *Governments of European Cities*, p. 27.
[2] H. Finer, *English Local Government* (1933), p. 299.
[3] W. B. Munro, *Governments of European Cities*, p. 57

the same model as the National Parliament. The next plan was the Murray MacDonald's scheme which proposed regional unicameral legislatures with members elected by the existing National Parliament. It may be presumed that there will be some changes in the present system of central control as also in the powers, organisation and functions of the local authorities if and when the Labour Party takes up the question of reforming the system of local government.

Government of London

Owing to its historical development, its size, and a special set of factors that apply only to this city and to none other in England, London has its own peculiar system of local-government; it has problems and schemes essentially its own. For the purpose of administration London, the capital of Great Britain, has been divided into three areas which considerably differ in size and population and have greatly varying forms of governments. These three divisions are the City of London, the County of London and the London Metropolitan District.

City of London. The City of London with an area of one square mile and a night population as in 1951 of only 15,000 but having a very large day population augmented by labourers and workers swarming into the city from the suburbs represents more of medievalism than of modern municipal democracy. It is "merely the ancient core of the modern leviathan—with its old boundaries virtually unchanged and its old type of municipal government unaltered."[1] The Municipal Corporation Acts have not affected its government. The City of London is a corporation made up of the freemen of the city and is governed by a Lord Mayor and three Councils, namely, the Court of Aldermen, the Court of Common Council and the Court of Common Hall. The Court of Aldermen consists of the Lord Mayor and 25 life-Aldermen. Its powers are almost insignificant. It licenses brokers and keeps city records. The County Common Council is the main governing body of the City. It consists of 206 Councillors yearly elected and 26 Aldermen, the same as in the Court of Aldermen. This body makes bye-laws for the city and performs all other functions save fire protection, main drainage, water supply, poor relief, public health or street railways. There is a committee for each service as there are permanent officials who, with the exception of sheriffs, are appoint-

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1 W. B. Munro, *Government of European Cities*, Edn. 4th. p. 273.

ed by the Council. The Court of Common Hall consists of the Lord Mayor, Aldermen, Sheriffs and all liverymen of London. It meets once in a year and recommends two of its senior Aldermen for Lord Mayorship to the Court of Aldermen which then goes through the ceremony of appointing one of the two nominees as Lord Mayor. The Lord Mayor has no independent powers. His office is altogether an honorary one. He appoints no city officials and performs no executive functions. He merely presides over the meetings of the three Councils and represents the city on ceremonial occasions.

County of London. The Administrative County of London which covers an area of 116 square miles is governed by a County Council which is composed of 124 elected members together with 20 Aldermen. The Councillors are elected for three years and the Aldermen are chosen by them either from among themselves or from outside, for 6 years, half of them retiring after three years. They together elect a chairman either from among themselves or from outside the Council. The Councillors and Aldermen enjoy equal powers and have only ceremonial differences. There are three parties in the Council : the Municipal Reforms, the Progressives and the Labour. The Council itself is an administrative authority and appoints most of its officials. Much of the time of the Council is spent in laying down general principles, the detailed work being done by its various committees. It has 18 Standing Committees and one Executive Committee which is composed of the Chairmen of all the 18 Committees. Their Chairmen and Vice-Chairmen are elected by the Council. Most of the Committees appoint sub-committees some of which have the final voice in administration. They are only advisory bodies and have no power of raising loans. The proceedings of the Council are conducted on parliamentary lines.

Functions of London County Council. The London County Council has the charge of all roads of Metropolitan character. It is the sole authority in respect of main sewerage and sewage disposals. It is also in charge of tunnels, ferries, bridges, fire protection, sanitation, public health, housing, municipal houses, education, recreation grounds and public fairs. With regard to public services, the London County Council has the authority to own and operate tramways ; but it cannot control bus services and underground railways. It also maintains a fleet of passage boats on the Thames. The water-supply is in the hands of a separate Metropolitan Water Board. But in all these functions it is not altogether free. It works under the supervision of the central Government. Yet "despite the limitations placed upon its authority,

the London County Council has made rather striking record of achievement during the past thirty-five years."[1] It is highly effective in securing proper legislation for London, "standing as the champion of the many, and especially the poor, against the vested interests of private good." Mr. Fox once said that the Council has done much to awaken the sense of "civic duty and Municipal patriotism in the citizens of London. . while to youngmen who look forward to political career, efficient service in the Council is an excellent pathway to the House of Commons." Thus the Administrative County of London has really performed works of immense value in the sphere of sanitation, public work and utilities, public health, education and administration.

London Metropolitan Boroughs. By the London Government Act of 1899 the whole administrative County of London is divided into 28 Metropolitan boroughs, each having a local government consisting of a mayor, aldermen, and councillors, all forming a borough council. The procedure of election is the same as in other boroughs in the country. The powers of these borough councils are more limited than those of other boroughs. "In general the borough council is the local highway authority."[2] The council constructs all main highways, and attends to street buildings, paving, lighting and cleaning of streets. It maintains and constructs subsidiary sewers and enforces the Public Health Act. It has the charge of public baths, wash-houses, public libraries, workmen's dwellings and local cemeteries.

Besides these three main authorities there are several other independent bodies such as a Metropolitan Water Board, a Metropolitan Asylums Board, the Thames Conservancy, the port of London Authority, thirty-one boards of poor law unions, and more than a hundred parish vestries. "A Government comprising so many independent authorites can hardly be very efficient or satisfactory. Some considerable simplification of the machinery would seem to be desirable and many Londoners are sure of it. . London as a community has far outgrown the bounds of the administrative county. . Hence Greater London remains a vast labyrinth of civic authorities through which the student of metropolitan institutions has no small difficulty in threading his way."[3]

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[1] W. B. Munro, *Governments of European Cities*, p. 155.
[2] *Ibid.* p. 157.
[3] *Ibid.* p. 190.

Recent legislation by the Labour Government has considerably altered the powers and duties of many of the local bodies. For example under the National Health Service Act, 1946, the duty of providing comprehensive health service has been placed on the Ministry of Health. And since July 5, 1948, all hospitals in England and Wales are vested in the Minister who has delegated the power of running these institutions to regional board. County council and county borough councils have become health authorities also.

The National Assistance Act, 1948, has repealed the Poor Law legislation and Blind Persons Act. County and County Borough Councils have been assigned additional functions, *viz.*, provisions of residential accommodation for the aged and physically handicapped, promotion of welfare of the blind, the deaf, the dumb, etc.

Conclusion. To sum up, modern local government in England has been a result of slow and gradual development since the Anglo-Saxon times. "So haphazard has been the development of Local Government until the last century that curious anachronisms are still frequently found."[1] The local magnates enjoy sufficient amount of autonomy to enable the people to voice their opinions and grievances. The central control over these authorities is neither rigid nor flexible. It is in between the two extremes. London, specially the small area of the City of London, has a unique organisation not only in England but in the whole world. During recent years owing to certain tendencies, *e. g.*, the Socialist Movement, there has been cry for reforms. The Labour members hesitate to seek election to the local councils because they are ashamed of it. They do not want municipal magnificence or even utilitarian efficiency, but aspire for the removal of municipal degradation. So low has fallen the conception of Municipal life in England that even the enthusiastic reformers criticise and disapprove the activities of the municipal governments. The good results of the municipal enterprise are not taken notice of.[2]

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[1] Kate Rosenberg, *How the Ratepayer is Governed*, p. 30.

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BOOK THREE

GOVERNMENTS OF THE DOMINIONS

Chapter 12 Dominion Status and the Commonwealth.
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"The colonies (are) co-ordinate members with each other and with Great Britain of an Empire united by a common executive sovereign, but not united by a common legislative sovereign."

—JAMES MADISON

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'I have always believed, and I still believe that the problems, of the British Commonwealth of Nations are problems of statesmanship, not essentially problems of law, and that statesmanship functions most creatively when it forgets the political dogma, the legal category, and perfers the general elastic principles of constitutional usage based on a practical wisdom, sustained by no legal parchment or musty statute but enriched and ennobled in the daily lives and the daily experiences of free born men.'

—W. P. M. KENNEDY

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"The ultimate basis of the unity of the British Commonwealth is the principle of freedom. The denial of this principle in active policy is the one thing that would necessarily lead to the destruction of the Commonwealth."

—J. G. LATHAM

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DOMINION STATUS AND THE COMMONWEALTH

A community which has any feeling of nationhood is likely to be more restive and less responsible in its policy and actions when it is under the control of another nation than when it has a real responsibility for its own affairs.

—RT. HON'BLE J. G. LATHAM

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Say what you will, the indigenous native rule is by far the best. A foreign government, perfectly free from religious prejudices, impartial towards all the natives and the foreigners, kind, beneficent and just to the natives like their parents though it may be, can never render the people perfectly happy.

—SWAMI DAYANAND

The British Empire. The British Empire, (or to give to a greater part of it a more recent name, the Commonwealth of Nations), is one of the most surprising phenomena in the political history of the world in regard to, for example, the extent of territory, the immensity of population, the variety of its peoples and languages, customs and manners, and economic and cultural features. Its area is 13,290,000 square miles, *i. e.*, one-fifth of the total land-surface of the earth, and its population, of over six hundred millions, again one-fifth of the human race. The Empire and Commonwealth under the Crown consist of: (1) The United Kingdom of Great Britain and Northern Ireland: (2) The self-governing Dominions of Canada, Australia, New Zealand, South Africa and Ceylon, (3) The Republics of India and Pakistan and (4) The Colonial or Dependent Empire, consisting of the Crown Colonies, Protectorates, and Trusteeship Territories.[1] Because of its unique political formation, the Commonwealth cannot be described by using any

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[1] Since January 26, 1950, India became a Republic and Pakistan a few years later, but continue to be members of the Commonwealth. Burma has assumed independence out of the Commonwealth since January 4, 1948.

familiar term of political science. "It is neither a State nor a Federation, it has no written constitution, no Parliament of its own, no Government of its own, no central defence force or executive power. It is a product of history and development, grown not designed, and the relationship between its members is still in process of evolution."

Purposes underlying formation of the Empire. The Britons established their Empire during the last three centuries and more, for various purposes which may briefly be summed up thus: extension of trade, outlet for surplus population, place for deportation of criminals and founding of strategic points for naval, land and other forces. During this long period there have been several phases of British colonial policy. In the beginning the colonies were looked upon as mere appendages of the mother country, existing for the benefit of the latter. The advantages to the British were many and of varied character and importance.

Advantages to England from the Possessions Overseas. Firstly, colonies proved a source of financial gain to the mother country in the shape of tribute or revenue paid by the dependencies. In the beginning, Britain did not tax the colonies but later, financially burdened by the wars of Revolution, she levied taxes on her North American Colonies. This policy culminated in the War of American Independence. The second advantage derived by the dominant country was naval or military assistance she could get by using them as naval or military bases. Gibraltar, Malta, and the Ionion Islands in the Mediterranean serve as military or naval stations of the British Empire. The third advantage was that of commerce. When the modern states of Europe discovered that raising of tribute from their dependencies was no longer possible they used them for commercial profits. To gain this object they excluded from the dependencies all ships except their own; they prohibited the ships of the dependencies from trading with any part of the world except the dominant country. No other European nation carried its colonial monopoly so far as Spain did or enforced it with so much vigour. The maxims, however, in accordance with which England regulated her intercourse with her colonial dependencies were scarcely more enlightened. "The leading principle of colonisation in all the maritime States of Europe (Great Britain among the rest) was," says Bryan Edwards in his History of the West Indies, "commercial monopoly." The word monopoly in this case admitted a very extensive interpretation. It comprehended the monopoly of supply, the monopoly of colonial produce, and the monopoly

of manufacture. By the first, the colonists were prohibited from resorting to foreign markets for the supply of their wants; by the second, they were compelled to bring their chief staple commodities to the Mother Country alone, and by the third, to bring them to her in raw or unmanufactured form so that her own manufactures might secure themselves all the advantages arising from their further improvement. This latter principle was carried so far as to compel the late Earl of Chatham to complain in Parliament, that the British colonists in America had no right to manufacture even a nail for a horse-shoe. Another advantage is that of the emigration of surplus population of the dominant country. A fifth advantage is the facility of transportation of convicts to the dependencies. Thus England transported her convicts to the Australian settlements. A sixth advantage is the glory of possession itself.

Prosperity of the colonies brought a change. This state of affairs, *viz.*, the treatment of the colonies as mere grounds for British exploitation for the benefit of Englishmen and not for the good of the colonists themselves could not last long. In course of time a great change occurred. The utilisation of natural resources of the colonies soon led to their prosperity, when they began to resent all undue interference from the mother country. The chief bone of contention was the colonists' claim to transplant the democratic institutions of their Mother Country in their new homes, while Britain resisted this claim. The Ministers of George III, in their anxiety to retain Parliamentary control over them, imposed new taxes on the thirteen colonies of North America. The colonists resisted this encroachment on their political freedom and raised the cry of 'No taxation without Representation', the first principle of British democracy.

Liberal statesmen opposed the colonial policy of the XVIII century. There were far-sighted statesmen in the British Parliament who foresaw the evil results of taxing the colonies without giving them representation in the House of Commons. Lord Camden, for instance, spoke on the subject thus: "..whatever is a man's own, is absolutely his own; no man hath a right to take it from him without his consent, either expressed by himself or his representative, whoever attempts to do it, attempts an injury, whoever does it commits a robbery, he throws down and destroys the distinction between liberty and slavery. Taxation and representation are coeval with and essential to this constitution..My Lords, I challenge any one to point out the time whne

any tax was laid upon any person by Parliament, that person being unrepresented in Parliament."[1] Eight years later, a motion was made in the House of Commons by the Opposition for the repeal of the American Tea Duty Act; it was defeated by a large majority. Edmund Burke supporting the motion for repeal criticised the policy of the Government in these words: "Sir, let the gentlemen on the other side call forth their ability; let the best of them get up, and tell me, what one character of liberty the Americans have, and what one brand of slavery they are free from, if they are bound in their poverty and industry, by all the restraints you can imagine on commerce, and at the same time are made pack-horses of every tax you choose to impose, without the least share in granting them. . The Englishman in America will feel that this is slavery—that it is legal slavery will be no compensation, either to his feelings or his understanding."[2] Ignoring all these protests and warnings, the Government of the day pursued a different policy. It precipitated a crisis. Ultimately, the War of American Independence (1773-1783) resulted in the loss to England of her thirteen colonies in the heart of North America.

Durham's Report and the change in colonial policy. This experience, dearly bought, changed the whole aspect of British colonial policy in the XIX century. And when troubles in Canada arose in the second decade of that century, Lord Durham, (sent out to Canada as Governor-General), submitted to Her Majesty's Government his most memorable report in 1839 which marked the beginning of an entirely new epoch in the colonial history of Britain. The concluding words of this valuable contribution to political science declared: "If in the hidden decrees of that wisdom by which this world is ruled, it is written that these countries[3] are not for ever to remain portions of the Empire, we owe it to our honour to take good care, when they separate from us, they should not be the only countries on the American continent in which the Anglo-Saxon race shall be found unfit, to govern itself." Thus Lord Durham advocated sound policy of so administering the colonies that they be fitted, in course of time, to govern themselves. Sir C. P. Lucas' comment on these words was right when he said: "These words apply beyond Canada and beyond America. The spirit of them transcends the sphere of settlement; it

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[1] Speech in the House of Lords, 24th February, 1766.
[2] Speech in the House of Commons, 19th April, 1774.
[3] Reference is to Lower Canada and Upper Canada.

is the living force of the whole British Empire. The words are the message of a great Englishman to his fellow countrymen, that the one thing needful is to leave behind a legacy of what is permanently sound and great."[1] Britain gave Canada, in 1842, a constitution which led her grow in the fullness of time, into the self-governing dominion along federal lines in 1867.[2]

Colonial policy in the second half of the XIX Century. No doubt, the nineteenth century saw the beginning of a change in the colonial policy of England, yet conditions in many of the colonies did not improve very much. Some Englishmen had the conviction that British colonial policy was faulty; Great Britain had sent out 2,000,000 emigrants to establish new colonies, therefore public attention became focussed on the system of the government of the colonies. It was believed that the system had all the faults of an essentially arbitrary government, in the hands of persons who had little personal interest in the welfare of those over whom they ruled; who resided at a distance from them; who never had occular experience of their condition; who were obliged to trust to second hand and one-sided information and who were exposed to the operation of all those sinister influences which prevailed wherever publicity and freedom were not established. These persons exercised their power in the faulty manner in which arbitrary, secret and irresponsible power must be exercised over distant communities. Efforts had been made to improve the administrative system of the colonies during the third quarter of the nineteenth century.

William Ewart Gladstone, the great liberal Prime Minister, speaking in the House of Commons on 26th April, 1870, explained the colonial policy of the Government in these words:

> We have had, experience of the policy of restraint attempted to be applied by European countries to their colonial possessions; and we have not only that experience in former generation to guide us, but we have also had most serious warnings addressed to ourselves, especially in the case of the great colony of Canada. Therefore, it is an honourable chapter in the history of our own times that there has been a great and almost continuous effort among

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[1] Sir C. P. Lucas in his Introduction to Lord Durham's Report.

[2] The precedent of Canada was, later on, followed in granting responsible self-government to other colonies, *viz.*, New Zealand, Australia, and South Africa.

> our statesmen, without distinction of party, to work out a policy such as to avoid the peril and disgrace, which whenever the period should arrive, would attach to separation effected by violence and bloodshed. This is done to the present hour and it is not, as supposed, the introduction of a new policy, but the successive application of principles now established and recognised by persons of authority of every shade of politics, and received, it may be said, with universal assent. That is the case as regards the policy we have endeavoured humbly to pursue; and it does not, in my opinion, tend to weaken the relations between the mother country and the colonies, but on the contrary while securing the greatest likelihood of a perfect peaceable separation; whenever separation may arrive, gives the best chance of an indefinitely long continuance of a free and voluntary connection. That is the footing on which we, like our predecessors, have endeavoured to found our colonial policy. *Freedom and voluntaryism form the character of the connection and our policy is not to be regarded as a surreptitious or clandestine means of working out the foregone purpose of casting off the colonies, but as the truest and best, if not the only means, of fulfilling our obligations to them.*

Era of Colonial Conference. This change in British colonial policy increased the opportunities for a closer co-operation between Britain and her overseas possessions. Accordingly, the first Colonial Conference (1887) was held in London, at the time of Queen Victoria's Jubilee. The conference was held to discuss matters of common interest to Britain and the colonies. Representatives of all colonies attended the conference and utilised this opportunity to hold discussions with members of the British Cabinet. Ten years later, in 1897, the Second Colonial Conference was held, attended by the Prime Ministers of Canada, New South Wales, Victoria, New Zealand, Queensland, Cape Colony, South Australia, Newfoundland, Tasmania, Western Australia, and Natal. The chief object of holding this conference was to have an exchange of views with the representatives of the colonies, in an informal and friendly manner, without coming to any binding decisions which the Colonial Governments might feel reluctant and unwilling to carry out. As a result of the discussions, the idea of an Imperial Federation was definitely ruled out. But useful suggestions were made with regard to inter-Imperial co-operation in defence, commercial and immigration matters.

In 1902, on the occasion of King Edward VII's coronation, a third

Colonial Conference was held, when it was decided to create some permanent advisory body to keep up this spirit of co-operation. It may here be mentioned that these colonies had by this time passed the age of infancy as self-governing countries and they had very well worked the democratic institutions granted them by the British Parliament. So that Britain had then to deal with fully grown-up nations, within the Empire. This conference was followed by that of 1907, which proved to be of very great importance. It stressed the fact that "the advance of the Empire depended as much on material co-operation as on changes of Government organisation. The Conference also marked an interesting epoch in the history of the Empire, for it changed its style to Imperial Conference, and bestowed on the self-governing Colonies the title of Dominions, as a complimentary acknowledgment of their higher status."[1] It also decided that the Imperial Conference should be held every four years. In 1911, the Second Imperial Conference was held, while that of 1915 could not be held on account of the Great War.

Imperial Conference of 1917. Before the Great War (1914-18) broke out, Canada, Australia, New Zealand and the Union of South Africa had all become self-governing dominions with responsible government according to the several Acts passed by the British Parliament. The spontaneous loyalty shown by the dominions in the War showed the wisdom of those British statesmen who had translated the new policy of granting responsible self-government, as enunciated by Lord Durham in his Report, into action. The Imperial Conference of 1917 resolved that any re-adjustment of constitutional relations (between the dominions and England), 'while thoroughly preserving all existing powers of self-government and complete control of domestic affairs, should be based upon a full recognition of the Dominions as autonomous nations of an Imperial Commonwealth, should recognize their right to an adequate voice in foreign policy and in foreign relations, and should provide effective arrangements for continuous consultation in all important matters of common Imperial concern and for such necessary concerted action founded on consultation as the several Governments may determine.'

Imperial Conference of 1926. The next conference was held in 1921, even though the War Cabinets of 1917 and 1918 in England consulted the Dominion Premiers on all important matters relating to

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[1] Keith, Constitution, Administration and Laws of the Empire, p. 103.

the war. The imperial Conference of 1926 took a step further and appointed a committee, with Lord Balfour as chairman, to investigate all matters of inter-Imperial relations. This committee came to a very definite and valuable decision, often called the Balfour Declaration, regarding the political status, inside the Empire, of the fully self-governing dominions. It defined their status thus: "*They are autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations.*" But it opined that the then existing arrangements (in 1926) were not admittedly in accord with the position described in the above Declaration. There were restrictions which required important alterations, particularly in the Royal Style and Titles and the status of the Governor-General. At the suggestion of the committee, the Conference recommended the appointment of a committee representative of Great Britain and the Dominions to examine the question and submit a report.

Imperial Conference, 1930. Accordingly, a Conference met in London in 1929 to examine the operation of Dominion Legislation and Merchant Shipping Legislation. It submitted its report which was considered at the Imperial Conference of 1930. This Imperial Conference substantially adopted the report and advised necessary legislation by the Imperial Parliament to give legal recognition to the status of equality, contained in the Balfour Declaration, and to remove the constitutional restrictions in the path of the Dominions to achieve that status.

Statute of Westminster, 1931. Accordingly, the Imperial Parliament passed the famous Statute of Westminster which received the King's assent on December 11, 1931. With the passing of this Statute which marks an event in British constitutional history, the Dominions acquired the status of equality with Great Britain inside the British Commonwealth of Nations, in all matters internal as well as international.

Ever since the passing of the British North America Act of 1867 up to the grant of responsible self-government to South Africa in 1909, there had been placed certain statutory restrictions over the powers of the government of these dominions. These restrictions were of legislative, executive and judicial nature. All legislative enactments required the assent of the King who was represented by the Governor-General. Hence the Governor-General could, in the King's name, withhold his

assent to any law passed by a dominion legislature. Secondly, the Governor-General, again in the name of the King, sometimes ignored the wishes of the dominion ministry. The dominion legislature could not pass any laws repugnant to Acts of Imperial Parliament, nor could it legislate against the spirit of the Merchant Shipping Act of 1894 (which restricted the legislative power of the dominions) or the Colonial Laws Validity Act of 1865. The judicial power of the dominions was restricted by the provision of an appeal from the highest judicial tribunal of the dominion to the Judicial Committee of His Majesty's Privy Council. Again, the Canadian Parliament could not amend the British North America Act, 1867, but had to look to the British Parliament for all constitutional amendments. The Statute of Westminster has now introduced several legal changes of a far-reaching character.

Because of its great importance, the Statute is reproduced here in its full text :

THE STATUTE OF WESTMINSTER, 1931 (22 Geo. 5, c. 4) [11 Dec. 1931]

Whereas the delegates of His Majesty's Governments in the United Kingdom, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland; at Imperial Conferences holden at Westminster in the years of our Lord nineteen hundred and twenty-six and nineteen hundred and thirty did concur in making the declarations and resolutions set forth in the Reports of the said Conferences :

And whereas it is meet and proper to set out by way of preamble to this Act that, inasmuch as the Crown is the symbol of the free association of the members of the British Commonwealth of Nations, and as they are united by a common allegiance to the Crown, it would be in accord with the established constitutional position of all the members of the Commonwealth in relation to one another that any alteration in the law touching the Succession to the Throne or the Royal Style and Titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom :

And whereas it is in accord with the established constitutional position that no law hereafter made by the Parliament of the United Kingdom shall extend to any of the said Dominions as part of the law

of that Dominion otherwise than at the request and with the consent of that Dominion :

And whereas it is necessary for the ratifying, confirming and establishing of certain of the said declarations and resolutions of the said Conferences that a law be made and enacted in due form by authority of the Parliament of the United Kingdom :

And whereas the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland have severally requested and consented to the submission of a measure to the Parliament of the United Kingdom for making such provision with regard to the matters aforesaid as is hereafter in this Act contained :

Now, therefore, be it enacted by the King's Most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

In this Act the expression "dominion" means any of the following Dominions that is to say, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland.

2. (*i*) The Colonial Laws Validity Act, 1865, shall not apply to any law made after the commencement of this Act by the Parliament of a Dominion.

(*ii*) No law and no provision of any law made after the commencement of this Act by the Parliament of a Dominion shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Parliament of a Dominion shall include the power to repeal or amend any such Act, order, rule or regulation, in so far as the same is part of the law of the Dominion.

3. It is hereby declared and enacted that the Parliament of a Dominion has full power to make laws having extra-territorial operation.

4. No Act of Parliament of the United Kingdom passed after the commencement of this Act shall extend, or be deemed to extend, to a Dominion as part of the law of that Dominion, unless it is expressly declared in that Act that that Dominion has requested, and consented to, the enactment thereof.

5. Without prejudice to the generality of the foregoing provisions

of this Act, sections seven hundred and thirty-five and seven hundred and thirty-six of the Merchant Shipping Act, 1864, shall be constructed as though reference therein to the Legislature of a British possession did not include reference to the Parliament of a Dominion.

6. Without prejudice to the generality of the foregoing provisions of this Act, section four of the Colonial Courts of Admiralty Act, 1890 (which requires certain laws to be reserved for the signification of His Majesty's pleasure or to contain a suspending clause), and so much of section seven of that Act as requires the approval of His Majesty in Council to any rules of Court for regulating the practice and procedure of a Colonial Court of Admiralty, shall cease to have effect in any Dominion as from the commencement of this Act.

7. (*i*) Nothing in this Act shall be deemed to apply to the repeal, amendment or alteration of the British North America Acts, 1867 to 1930, or any order, rule or regulation made thereunder.

(*ii*) The provisions of section two of this Act shall extend to laws made by any of the Provinces of Canada and to the powers of the legislatures of such Provinces.

(*iii*) The powers conferred by this Act upon the Parliament of Canada or upon the legislatures of the Provinces shall be restricted to the enactment of laws in relation to matters within the competence of the Parliament of Canada or of any of the legislatures of the Provinces respectively.

8. Nothing in this Act shall be deemed to confer any power to repeal or alter the Constitution Act of the Commonwealth of Australia or the Constitution Act of the Dominion of New Zealand otherwise than in accordance with the law existing before the commencement of this Act.

9. (*i*) Nothing in this Act shall be deemed to authorise the Parliament of the Commonwealth of Australia to make laws on any matter within the authority of the States of Australia, not being a matter within the authority of the Parliament or Government of the Commonwealth of Australia.

(*ii*) Nothing in the Act shall be deemed to require the concurrence of the Parliament or Government of the Commonwealth of Australia in any law made by the Parliament of the United Kingdom with respect to any matter within the authority of the Parliament or Government of the Commonwealth of Australia, in any case where it would have been in accordance with the constitutional practice existing before the commencement of this Act that the Parliament of the

United Kingdom should make that law without such concurrence.

(*iii*) In the application of the Act to the Commonwealth of Australia the request and consent referred to in section four shall mean, the request and consent of the Parliament and Government of the Commonwealth.

10. (*i*) None of the following sections of this act, that is to say, sections two, three, four, five and six, shall extend to a Dominion to which this section applies as part of the law of that Dominion unless that section is adopted by the Parliament of the Dominion and any Act of that Parliament adopting any section of this Act may provide that the adoption shall have effect either from the commencement of this Act or from such later date as is specified in the adopting Act.

(*ii*) The Parliament of any such Dominion as aforesaid may at any time revoke the adoption of any section referred to in subsection (1) of this section.

(*iii*) The Dominions to which this section applies are the Commonwealth of Australia, the Dominion of New Zealand and Newfoundland.

11. Notwithstanding anything in the Interpretation Act, 1889, the expression "Colony", shall not, in any Act of the Parliament of the United Kingdom passed after the commencement of this Act, include a Dominion or any Province or State forming part of a Dominion.

12. This Act may be cited as the Statute of Westminster, 1931.

The preamble to the Act recognises that "the Crown is the symbol of free association of the members of the British Commonwealth of Nations," and declares that as "they are united by a common allegiance to the Crown, it would be in accord with the constitutional position of all the Commonwealth in relation to one another that any alteration in the law touching the Succession to the Throne or the Royal Style and Titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom." The Act removes all restrictions on dominion legislation, imposed by the Colonial Laws Validity Act. It declares that no dominion law shall be deemed inoperative on the ground of its being repugnant to the law of England and empowers the Parliament of a Dominion to repeal or amend any law of British Parliament in so far as the same is part of the law of the Dominion. It further provides that no law made, after the commencement of this Act, by the British Parliament, shall extend to any Dominion unless the Dominion has expressly consented to the enactment thereof. In short, the Statute of Westminster defines the

status of the self-governing Dominions, *viz.*, the Commonwealth of Australia, the Dominion of Canada, the Dominion of Newzealand, the Union of South Africa, the Irish Free State (now called Eire) and Newfoundland, as that of perfect equality with Great Britain inside the British Commonwealth of Nations.[1] What a change from the Colonial policy of 1773 to the Dominion Status of 1931!

Legal Sovereignty of Parliament is Intact. Legally speaking, the Statute of Westminster does not abolish the sovereignty of the British Parliament over the Dominions, for no Parliament can enact a law to bind its successors. While retaining this Parliamentary Sovereignty the Statute specifies the manner in which it is to be exercised; section 4 lays down that 'no Act of Parliament of the United Kingdom passed after the commencement of this Act shall extend, or be deemed to extend, to a Dominion as part of the law of that Dominion, unless it is expressly declared in that Act that that Dominion has requested, and consented to the enactment thereof.'

The Position of the King in the Dominions. The position of the King in each Dominion, consequently, acquires a new meaning. He is now the King of each Dominion, for example, the power of the King in Canada is the power of the King of Canada and not that of the King of England. The King of Canada, therefore, acts on the advice of his Canadian Ministers in all matters relating to the administration of Canada. As Keith points out, when the new buildings of the Union of South Africa in London were opened by the King in 1932, he had in waiting not the Home Secretary but a representative of South Africa. When the King visited Canada in 1939, he performed the Royal functions himself; he appeared in the Canadian Parliament, promulgated Bills and received the credentials of the U. S. A. Minister to Canada, and held a meeting of his Canadian Privy Council. All this he did in his capacity as the King of Canada and not as the King of England.

External Independence of the Dominions. The Statute of Westminster legalises the external sovereignty also of the Dominions, a sovereignty which had existed in several respects before 1931. The admission of the Dominions to the League of Nations as independent members and their election to the Council of the League was an important example of their independence. When the Abdication Act

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[1] Eire has now become a Republic outside the Commonwealth. Ceylon has also become a Dominion as defined in this Statute.

was passed in December 1936, prior consent of the Dominions had been obtained by the British Cabinet because the Act was introducing a great constitutional change in Monarchy. When the second World War between Great Britain and Germany was declared, the constitutional position of the Dominions in international relations was put to a great test. The United Kingdom, not the Dominions, declared war on Germany at 11 a.m. on September 3, 1939. The Australian Commonwealth by her own resolution declared war on Germany on September 5. In the Union of South Africa, the Government of General Hertzog moved a motion for neutrality of the Union of South Africa but it was defeated by 80 votes against 67. The Government resigned; a new cabinet was formed by General Smuts and South Africa declared war on Germany on September 6. The Canadian Parliament discussed the question of Canada's participation in the war and approved of the declaration of war against Germany on September 9. The Irish Government declared the neutrality of Eire. All these decisions were made by each dominion for itself and not under any pressure from Great Britain.

Several Dominions maintain their own ambassadors at foreign Courts. They have also carried on independent negotiations with foreign states on commercial and allied questions. All constitutionalists now maintain that the Dominions have acquired, under the Statute of Westminster, the right of secession from the British Commonwealth of Nations. In the Union of South Africa, at least, there has been a move for secession, though it seems inconceivable that a Dominion will secede and lose the protection of the Commonwealth against any foreign aggression. The Dominion of Canada has abolished appeals to the Privy Council and amended its constitution depriving the British Parliament of the power to amend the Canadian Constitution.

Dominion Governor-General. Since the passing of the Statute of Westminster, the position of a Dominion Governor-General has, naturally, acquired a new prestige. He represents now not the King of England but the King of the Dominion concerned. He is appointed by the King by letters patent issued under the Royal Sign Manual. But in the selection of the Governor-General the King is mainly guided by any advice given by his Ministers of the Dominion concerned. The Imperial Conference of 1930 had conceded the right of a Dominion to make its own choice of Governor-General; soon after that, Sir Isaac Isaacs was appointed Governor-General of the Common-

wealth of Australia and Lord Bessborough as Governor-General of Canada on the advice of the Commonwealth and Canadian Ministers respectively. Leave of absence to a Dominion Governor General is now given through the Prime Minister of the Dominion and not through a Secretary of State. Thus a Dominion Governor-General, as representing the authority of the King of the Dominion is now merely a constitutional head acting on the advice of the Dominion Cabinet just as the King of England acts on the advice of the British Cabinet.

The Commonwealth

The Statute of Westminster is a recognition of the sovereignty of the Dominions. On applying the three tests[1] of sovereignty for purpose of recognition under international law as defined by Stowell, we easily infer that the Dominions are sovereign states in which the King of England, in his capacity as king of each dominion, is the head of state. The membership in the United Nations gives the dominions international recognition as sovereign states. On August 15, 1947, India and Pakistan also became dominions, with the option of secession from the British Commonwealth of Nations. When India exercised this option and became a Republic on January 26, 1950, she was allowed to continue her membership of the Commonwealth, although her allegiance to the British monarchy came to an end. The Constitution of India makes no reference to the British monarchy. The adjective 'British' was taken away in order to accommodate the republic of India to continue her membership and the term '*Commonwealth*' is now used to designate the group of states, including those enjoying the status defined in the Statute of Westminster, and the republics of India and Pakistan, the last two having no allegiance to the British monarch but accepting the king only as the symbolic head of the Commonwealth to signify its unity. The Communique issued on October 22, 1948, after the Commonwealth Prime Ministers' two-week conference has considerable significance in understanding the nature of the Commonwealth bond. The Communique stated: "The meetings

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[1] The three tests are: (1) Permanent organisation under the direction of officers capable of representing the group and of enforcing upon the members thereof a substantial observance of international law; (2) the group so organised must be independent of foreign or external control; (3) possession of a defined territory which the government of the group controls and polices in conformity with the principles of international law. *International Law*, p. 34.

held during the past two weeks have covered many matters of common concern including international relations, economic affairs and defence. The discussions have shown a substantial community of outlook among all the Commonwealth Governments in their approach to world problems... The United Kingdom Government outlined the nature of its association with other Western European nations under the Brussels Treaty, as a regional association within the terms of the United Nations Charter. There was a general agreement that this association of the United Kingdom with her neighbours was in accordance with the interests of other members of the Commonwealth, the United Nations and the protection of World Peace". The mere fact that the United Kingdom and Pakistan along with some other Dominions approve of the policy they have pursued by their membership of the SEATO and the Baghdad Pact, while India is against such pacts and has declared her neutrality and non-alignment with power blocs, makes it clear that the members of the Commonwealth are sovereign states.

As Carrington points out, "The Commonwealth is held together by hard practical relations".[1] Inside the Commonwealth itself, India, the United Kingdom, Pakistan and Ceylon recognised the Republic of China, whereas Australia, Newzealand, Union of South Africa and Canada did not accord recognition; this further established the independence in foreign affairs of the various members of the Commonwealth. That disputes between members of the Commonwealth have been taken directly to the United Nations (like the Kashmir issue) leaves no doubt about the sovereignty of the members of the Commonwealth. The Prime Minister of India, Nehru, stated the formal implications of India's membership of the United Nations in these words: "By remaining in the Commonwealth India will enjoy the right to be represented at Commonwealth Conferences and the right to be consulted and kept informed on Commonwealth matters. No treaty with a foreign power and no declaration of War by a member of the Commonwealth would be binding on her without her express consent. India will continue to enjoy Commonwealth preferences in the matter of tariff and Indians will enjoy the rights they had in the Commonwealth countries before the inauguration of the Republic."[2] Speaking in the Lok Sabha, on an Opposition

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[1] Carrington, C. E.—*A New Theory of the Commonwealth.* Article published in *International Affairs*, Vol. XXXI, 2 (April 1955), p. 148.

[2] Gled Hill, A.—*Commonwealth Relations*, p. 15.

motion, on March 17, 1953, that India should relinquish her link with the Commonwealth, Nehru said, "I think we have gained positively by being in the Commonwealth, definitely so....I think we have somewhat influenced world policies, not only directly in so far as we can, but to some extent indirectly through the Commonwealth, and I think that is to our advantage and to the world's advantage....there is no obligation on us or on the other party except the obligation of an occasional friendly approach and friendly talk."[1]

In 1957, the composition of the Commonwealth, with population and area, was the following :—

Territory	*Status*	*Area in 1000 sq. miles*	*Population in millions*
United Kingdom	Independent	94	51
Canada	Dominion	3845	15
Australia	Dominion	3000	9
India	Independent	1221	356
Union of South Africa	Dominion	472	13
Ghana	Dominion	435	34
Pakistan	Independent	364	75
South Rhodesia	Dominion	150	2
Newzealand	Dominion	105	2
Malaya	Dominion	50	6
Ceylon	Dominion	25	8
Total		9761	571

The matters in which the members of the Commonwealth cooperate are the following :—

1. Political matters. Commonwealth Conferences are held from time to time where the Prime Ministers of member countries try to chalk out programmes of mutual assistance and development (like the Colombo Plan). In international bodies like the UN the members of the Commonwealth try to follow, not compulsorily, similar line on questions not affecting their own commitments and basic foreign policies.

2. Economic. In international trade and commerce, members show special consideration to one another in the shape of most

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[1] *India News*, March 21, 1953, p. 89.

favoured-nation treatment. Most of the members belong to the sterling currency area. The more developed members have agreed to help the underdeveloped areas.

3. Technical assistance. The Conference of Foreign Ministers of the Commonwealth which met at Colombo in 1950 set up a consultative committee which met at Sydney and then at London, later in the year, and recommended the provision of financial aid and technical assistance to the countries of the south and south-east Asia.

4. Miscellaneous. In the cultural and social fields the members of the Commonwealth grant scholarships to students coming from other members. Exchange of professors, cultural delegations and similar other cooperative efforts lead to better understanding among the peoples of the Commonwealth, paving the way for promoting peace in the world.

The Commonwealth of Nations is, from the constitutional point of view, a unique organisation—it is not a federation of sovereign and independent states. It is an association of independent states with freedom to opt out and full internal sovereignty and freedom to have, each member for itself, its own foreign policy. The discussions at Commonwealth conferences are mutual exchange of views on matters of common concern. The recommendations, if any, are not binding on members. The King is only a connecting link as formal head; the republics of India and Pakistan do not owe allegiance to the British monarch. The Commonwealth is the product of continuous growth of the concept of self-government in the British Empire. As the Prime Minister of Canada, L. St. Laurent, stated in a broadcast from London on January 10, 1951, "The Commonwealth is not a political unit. It is not an alliance. It has no common policy. The nations of the Commonwealth make their own separate decisions in world affairs and none of them is prepared to give up the right".

As the members of the Commonwealth are widely dispersed, their economic, political and social contacts are also widespread. The unprovoked Anglo-French attack on the Suez Canal in October 1956 almost stretched the Commonwealth link to a breaking point, as England 'overthrew' her good faith with other members and in doing so lost her good-will among nations of the world. The Commonwealth has no written constitution and is subject only to conventional development which characterised the growth of the British Parliament. It continues on the principle of mutual adjustments among members, with the king as the ceremonial head. Membership of the Common-

wealth does not, in any way, compromise the independence and sovereignty of its component units. The Commonwealth may one day inspire the idea of a world commonwealth.

So we grew together,
Like to a double cherry, seeming parted,
But yet a union is partition;
Two lovely berries moulded on one stem.
—Shakespeare.

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13

THE DOMINION OF CANADA

The significance of Confederation is that it provided an instrument of government which enabled the French, while retaining their distinct national life, to become happy partners with the British and attain a Canadian super-nationality, embracing a loyalty extending beyond their own group to that of the Dominion as a whole.

—ALEXANDER BRADY

THE DOMINION of Canada, member of the British Commonwealth of Nations, has an area of about 3,845,000 square miles, and a population of 14,009,429 (1951 census) human souls. Of the latter nearly 3 millions are of French origin. Canada was the earliest British colony formed into a dominion with a federal constitution, in the British Empire. Its constitution, therefore, presents many novel features, particularly on account of the presence of a large French population which predominates in the province of Quebec.

HISTORY OF THE CONSTITUTION

Upto 1759. The French colonists founded the Colony of Canada in 1608. In the beginning it was autocratically governed by the French King as a province of France. On the outbreak of the Seven Years' War between the French and the English in Europe, the nationals of these two countries began to fight in Canada as well. General Wolfe, the commander of the English forces in North America, conquered Quebec on September 18, 1759, and Montreal a year later, and thus gained Canada to England. The Treaty of Paris, 1763, recognised the cession of Canada by France to the King of England, providing at the same time that "His Britannic Majesty, on his part, agrees to grant the liberty of the Catholic religion to the inhabitants of Canada. ." The King of England, thereafter, appointed a Governor for Canada, who was to be assisted by a council and an assembly. The subsequent influx of British immigrants into this new country compli-

cated the political problem. The system of administration satisfied neither the French majority nor the British minority. In 1770, the efforts of Governor Carleton resulted in the passing, by the British Parliament, of "the Quebec Act of 1774, which removed most of the grievances and disabilities of the Roman Catholics."[1] The War of American Independence further changed the whole aspect of Canadian politics, because a large number of loyalists from the U. S. A. entered Canada and settled there. In 1791, the British Parliament passed the Constitutional Act (Canada Act), again at the suggestion of Carleton (then known as Baron Dorchester and appointed Governor for a second time in 1787). This Act divided Canada into Upper Canada with a British majority and Lower Canada with a French majority. Each province was given a nominated and hereditary Council and an elected Assembly. The Governor obtained virtually independent control by getting the Crown revenues and military grants, without having to wait for supplies on the will of the legislature. In this way, the Canadian executive became independent and irresponsive, and it received its instructions from 'the Colonial Office lying thousands of miles away and little acquainted with the real situation'. In Lower Canada the British dominated in the Council and the French in the Assembly. Hence each house tried to get for itself larger powers than the other. "This often created deadlocks between the representative Assembly and the irresponsive executive. The French *versus* English controversy assumed unmanageable proportions in Lower Canada, and Papineau, the leader of the French, who had often been elected Speaker of the Assembly, rose into revolt and appeal was made to arms. The rebellion was suppressed and Papineau fled, but the smouldering embers of discontent were not finally extinguished. In Upper Canada, too, there was discontent and the British majority clamoured for popular control over the administration."[2]

Durham's Report. To deal with this complex problem of Canada, the British Government suspended the constitution of that colony and sent out Lord Durham, armed with full administrative powers. Within two years of his appointment (1837-39) Lord Durham studied the whole situation closely and submitted to the British Government his celebrated report which is rightly considered a great landmark in British colonial history. He complained of the disorganised militia,

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[1] Sharma, *Federal Polity*, p. 85.

[2] *Ibid.* p. 86.

the obstruction and perversion of justice on account of racial animosity between the British and the French inhabitants, the unrepresentative character of the Governor and his too much dependence on the Colonial Office, and the irresponsive and irresponsible executive. To cure all these evils he suggested that though inexperience might lead to a few mistakes here and a few mistakes there, the colony must be granted a form of government responsible to the colonists themselves. He hoped that then and then alone the English and the French would learn to respect each other's feelings.

United Canada. Though all the suggestions Lord Durham made did not meet with the approval of the British Government, Parliament passed an Act uniting the Upper and the Lower Canada, on 23rd July, 1840. The opening words of the Preamble to the Act stated 'Whereas it is necessary that provision be made for the good Government of the Provinces of *Upper Canada and Lower Canada* in such manner as may secure the rights and liberties and promote the interests of all classes of Her Majesty's subjects within the same. And whereas to this end it is expedient that the said Provinces be re-united and form one Province for the purposes of Executive Government and Legislation..' This indicates that the British Government felt convinced, at that time, that a re-union of the two provinces was likely to give peace to Canada. For two decades the system of government established by this Act continued to work, but the intrinsic differences not only in the composition of the population of the two parts of Canada but also in their various interests, coupled with the desire of the adjoining colonies to strengthen their political bond, opened new problems. In these circumstances, "This system failed to satisfy the Colonists who began to feel the great necessity of a federal form of union between all the Colonies[1] in North America."[2]

Quebec Resolutions and After. The need of communications between the different parts of the vast country and the expansion of agriculture to the western parts brought the colonists closer together. And in 1860, the movement for union took a vocal shape. The delegates from all the important colonies including Nova Scotia, New Brunswick and Prince Edward Island, met at Quebec on 24th October, 1864, and passed the famous *Quebec Resolutions* embodying the essentials of a federal constitution for a united and bigger Canada. An in-

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[1] Only those colonies that were under rule of the British.

[2] *Federal Polity*, p. 89.

fluential delegation of statesmen from the principal colonies crossed over to England to discuss their constitutional problem with Her Majesty's Government. After fruitful discussion the British Government gave Canada a new constitution embodied in an Act of Parliament (The British North America Act, 29 March, 1867, 30 and 31 Vict. Chap. 3 "Statutes at Large") establishing a federation in Canada. "The Act of 1867 marked a distinct departure in the colonial policy of Britain and showed that the lesson of the American Revolution had not been lost in the counsels of the British Cabinet. It also indicated that even while owing common allegiance to their British Sovereign the colonies could evolve a system of government which would satisfy their aspirations. It was this lesson of the Canadian federation which placed before the other parts of the British Empire an example which was soon followed with vantage."[1]

The Constitution of 1867

Principles of the Constitution. As already said, the British North America Act of 1867 was based generally on the famous Quebec Resolutions of 1864. Resolution No. 3 ran: "In framing a constitution for the general Government, the Conference, with a view to the perpetuation of our connexion with the Mother Country, and the promotion of the best interests of the people of these Provinces, desire to follow the model of the British Constitution, so far as our circumstances permit." This desire of the Colonists was embodied in the Act itself the Preamble to which stated: "Whereas the Provinces of *Canada, Nova Scotia,* and *New Brunswick* have expressed their desire to be federally united into one Dominion under the Crown of the United Kingdom of Great Britain and Ireland *with a Constitution similar in Principle to that of the United Kingdom.*" Thus the constitution of Canada, based generally on the British model, follows most of the British traditions. The chief features of this constitution are the following:

(1) It establishes a parliamentary executive as opposed to a presidential one (as of the U. S. A.) or a collegiate one (as of Switzerland).

(2) The upper house of the federal Parliament is composed of senators appointed for life by the Governor-General. The name Parliament is borrowed from England and life membership of the

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[1] *Ibid.* p. 90.

Senate is an attempt to make some kind of approach to the hereditary nature of the House of Lords.

(3) The powers of the federal government are greater than those of the component units which have been named as *provinces* and not *states*, the former designation showing a kind of subordination to the centre. All residuary powers belong to the central government.

(4) To follow the British constitution as far as possible the Act provides for the creation of a Privy Council of Canada, on the lines of the British Privy Council. This is a very singular feature of the Canadian constitution, not to be seen in the constitution of any other British dominion.

(5) The amendment of the constitution can be, in theory at least, made only by the British Parliament. In this respect, too, Canadian constitution is different from the other British dominion constitutions.[1]

(6) The powers of the Canadian judiciary are also less than those of the Australian judiciary, though after the passing of the Statute of Westminster the actual practice has become different from the theory.

(7) It has combined parliamentarianism with federalism, the first experiment of its kind followed later in Australia, India and Pakistan.

Canada was the first country within the British Empire to get a federal form of government. Hence, British federalism, born only in 1867, has some peculiar features of its own. Firstly, it has preferred the parliamentary form of government. Secondly, on account of the connexion of the British Colonies with the mother country, the British Sovereign appears as the (nominal) head of the executive, and the legislative power is also vested in the (British) Sovereign and a (dominion) parliament. These features of British federalism distinguish it from American or Continental federalism. Since the passing of the Statute of Westminster, the King's title has undergone a change.

The working of the federal constitution (1867) of Canada has given the French population of Lower Canada (commonly called the Province of Quebec) a chance to govern itself. But the lapse of nearly three quarters of a century has obliterated much of the racial differences

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[1] Early in 1950 the Canadian Parliament, taking advantage of the provisions of the Statute of Westminster, resolved to abolish Parliament's authority to amend the Canadian Constitution and the British Parliament has passed the necessary legislation to that effect.

between the Canadians of a French and British origin, so much so that the people of Lower Canada no longer call themselves French but simply Canadians or French speakers. "So far as they belong to France, it is to a France of the eighteenth, not of the twentieth century. Since the Revolution of 1789, and still more since the establishment of the present Republic in France they have been but slightly affected by French political institutions or ideas, for though educated men read French books, the anti-clerical attitude of the Republicans who have governed France during the last forty years has been repellent."[1] It is true that the two races in Canada have not blended, nor are they likely to blend, yet the old animosities of the pre-1840 days have generally disappeared and this is mainly due to the constitution of 1867 which has given them an opportunity to live apart and yet as equal partners in the common Dominion Government.

The Federal Government

Its Powers. As said above, the federal government has larger powers than the governments of the provinces. Few federations give to the central authority the extensive powers enjoyed by the Dominion Government in Canada.[2] According to Art. 91 of the constitution, the exclusive legislative power of the federal government extends to the following subjects:

(1) The public debt and property.
(2) The regulation of trade and commerce.
(3) The raising of money by any mode or system of taxation.
(4) The borrowing of money on the public credit.
(5) Postal service.
(6) The census and statistics.
(7) Militia, Military and naval service, and defence.
(8) The fixing of and providing for the salaries and allowances of civil and other officers of the Government of Canada.
(9) Beacons, buoys, lighthouses, and Sable Island.
(10) Navigation and shipping.
(11) Quarantine and the establishment and maintenance of marine hospitals.

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[1] Bryce, *Modern Democracies*. vol. I, p. 521. Reference is to the Third Republic.

[2] Dawson, *Constitutional Issues in Canada*, 1909-1931, p. 431.

(12) Sea coast and inland fisheries.

(13) Ferries between a Province and any British or foreign country or between two Provinces.

(14) Currency and coinage.

(15) Banking, incorporation of banks, and the issue of paper money.

(16) Savings banks.

(17) Weights and measures.

(18) Bills of exchange and promissory notes.

(19) Interest.

(20) Legal tender.

(21) Bankruptcy and insolvency.

(22) Patents of invention and discovery.

(23) Copyrights.

(24) Indians, and lands reserved for Indians.

(25) Naturalisation and aliens.

(26) Marriage and divorce.

(27) The criminal law, except the constitution of courts of criminal jurisdiction, but including the procedure in criminal matters.

(28) The establishment, maintenance, and management of penitentiaries.

(29) Such classes of subjects as are expressly excepted in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces.

And any other matter coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the legislatures of the Provinces.[1]

Federal control over Provinces. The Federal Government exercises still another kind of control over the provincial governments through the agency of the Governor-General in Council in that he appoints and also removes the heads of provincial governments, called Lieutenant-Governors, and can disallow any legislation passed by a provincial legislature. So far only two Lieutenant-Governors have been removed by the Governor-General in Council. "The power of disallowance on the other hand, was freely used during the first thirty years of the federation, and it constituted at that time a serious

[1] Art. 19 of the British North America Act ; 1867.

menace to provincial legislative autonomy".[1] And though, in theory, this power of disallowance still remains "legally unimpaired" it has not been frequently used after the close of the last century. Recently the Dominion Government has begun to exercise a new form of control over the provincial governments—a control not contemplated by the Act. This is the system of grants-in-aid which enables the Dominion Government to control the sphere of action of provincial governments by giving them grants for specific purposes, which enable these governments to initiate new works in their sphere.

The legislative power is vested in the King and a Parliament.

The Federal Legislature. The Federal (Dominion) Legislature of Canada is a bicameral legislature and is generally based upon the British model. It is called the Parliament of Canada and consists of a House of Commons (the Lower Chamber) and a Senate (the Upper Chamber). Its legislative powers have already been mentioned above.

Principles of representation in the Lower House. According to the Representation Act, 1947, the strength of the Canadian House of Commons was fixed at 255 members distributed thus Ontario 83, Quebec 73, Saskatchewan 20, Manitoba 16, Alberta 17, British Columbia 18, Nova Scotia 13, New Brunswick 10, Prince Edward Island 4 and Yukon 1. In 1949, Newfoundland also joined the federation and was given 6 seats in the House of Commons, whose strength was thus increased to 261. The original membership (under Art. 37 of the Act) was fixed at 181, but Art. 51 provided for the readjustment of representation by the Parliament of Canada, after every decennial census subject to these rules: Quebec shall have the fixed number of 65. Each of the other provinces shall have a number which will bear the same proportion to the population of the province as the number 65 bears to the population of Quebec, every fraction above one half being counted as one. In any such readjustment the existing representation of a province would not be reduced unless the proportionate population of the province at the preceding census had during the following census diminished by five or more than five per cent. But in no case the representation of Quebec was ever to be less than 65. At present the total representation of the whole Dominion in the Commons would be determined by dividing the total population of Canada by the quotient obtained by

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[1] Dawson, *Constitutional Issues in Canada*, p. 432.

dividing the population of Quebec by the number seventy-three. The following formula makes it still more clear:

$$\text{Strength of the House of Commons} = \frac{\text{Population of Canada}}{\text{Population of Quebec}} \Big/ 73$$

Calculating thus the representation in the Canadian House of Commons at present comes to one member for 45,600 persons approximately, elected through single-member constituency. At every decennial census, due to increase in population, and also due to the other provinces joining the federation[1] there has been an increase in the membership of the House whose present strength is 263. Twenty members form a quorum for sitting of the House. The House elects its own Speaker who presides over its sitting. The normal life of the House is five years but it may be dissolved earlier provided the Governor-General permits the Prime Minister to make a fresh appeal to the country. The rules of its procedure are made by the House; the form of debate is like that at Westminster. There are about a dozen standing committees which have specialized on various types of bills. All questions in the House are decided by a bare majority vote and when the voices (excluding that of the Speaker) are equal but not otherwise, the Speaker has a vote. Though the Speaker retains active membership of the political party he belongs to, he presides with considerable impartiality. Under an alternating arrangement made to satisfy the two racial groups (the French and the British) every new House has a new speaker and a deputy speaker, each belonging to a different language group. When the speaker is an English-speaking person the deputy speaker is a French-speaking person. This alternates with each new House. There is universal adult suffrage for election to the House which thus represents the general will of the people. The Dominion Act of 1920 has given every adult male and female a vote provided he or she is a British subject and has been resident of Canada for a year and of the constituency concerned for two months. And "persons personally naturalised are also eligible, but there are certain limitations as to wives and children of such

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[1] In 1867, there were only four provinces, *viz.* Ontario, Quebec, Nova Scotia and New Brunswick in the federation. British Columbia joined it in 1871; Prince Edward Island in 1878, Manitoba in 1810, and Alberta and Saskatchewan in 1905, under Article 146 of the Act which provided for admission of new members. On March 31, 1949, the island of Newfoundland joined the federation as the tenth province.

persons, and alien women married to British subjects, and as to persons who are specially disqualified in any province, as are North American Indians in some provinces, and Indians, Japanese and Chinese naturalised subjects in British Columbia."

Composition of the Senate. The Senate, or the upper house, consists of at present, 102 members distributed thus,[1] Ontario 24, Quebec 24, the Maritime Provinces 24 (Nova Scotia 10, New Brunswick 10 and Prince Edward Island 4), and the fourth group of four provinces 24 (six each province) and Newfoundland (that joined the federation on 31st March 1949) 6. The Canadians desired to follow the British model but as hereditary membership (like that in the English House of Lords) could not be arranged, Senators are appointed for life by the Governor-General on the recommendation of the Cabinet. Therefore, vacancies that occur in the Senate are naturally given by the Cabinet to the old persons who have served the political party to which the Cabinet belongs. For this reason, the Senate is sometimes derided as the bribery fund in the possession of the Cabinet. Another undemocratic feature of the Canadian Senate is the high qualification for its membership.

Qualifications of Senators. Art. 23 lays down the qualifications for a Senator. He should be of the full age of thirty years. He should be either a natural born subject of the British Sovereign or a naturalised citizen under law of British Parliament or of any of the Canadian legislatures. He must possess freehold and unencumbered property of the value of four thousand dollars. He must be a resident of the province for which he is appointed. In the case of Quebec he must be a resident of the electoral district for which he is appointed.

Nominees of the Governor-General. In case of a vacancy by death, resignation or otherwise of a Senator, the Governor-General proceeds to appoint his successor. The Governor-General has also the right to be exercised in the name of the King, to nominate four to eight additional Senators to the Senate to solve a deadlock between the two chambers. A Senator loses his seat if he is absent from two consecutive sessions of the Senate, if he takes an oath of allegiance to a foreign power, if he is convicted of treason or felony, if he is declared bankrupt, or if he ceases to hold the necessary property qualification.

The Governor-General appoints a Senator to be the Speaker of the Senate and may remove him and appoint another. At least fifteen

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[1] *The legal maximum limit is* 110.

Senators form a quorum. The speaker always has a vote, but in case of equality of votes the decision is considered to be in the negative. The Senate is largely a revising chamber and has undoubtedly failed to be the sheet-anchor of provincial interests.

Organisation and working of the Senate. The rules of legislative procedure in the Canadian Parliament closely follow those in the parent body, *viz.*, the British Parliament. It is, in both countries, the lower house which is the real political battle-field where the fate of the ministry is decided. "The House of Commons is the busiest painter of constitutional issues in Canada, and it is a rare session that does not leave behind some addition to the Gallery of Political Science. A new sketch of the Governor-Generalship, a retouching of an old view of Civil Service reform, a futuristic attempt to give effect to the members' conception of the foreign relations of the Empire—the walls are fast being filled with such efforts."[1] The House of Commons and the Senate enjoy equal legislative powers but money bills must originate in the House. In case of a deadlock between the two, the Governor-General may add to the Senate four or eight members, one or two from each province or group of provinces. When a legislative measure has passed through both chambers it must receive the Governor-General's assent before being placed on the statute book. In practice, this assent is never refused. And the Canadian Parliament has now full powers of legislating for the needs of that great dominion, including the power to amend the constitution.

The Federal Executive

King as the executive. Art. 9 of the British North America Act states: "The Executive Government and Authority of and over *Canada* is hereby declared to continue and be vested in the Queen." When this Act was passed it was the English Crown that was meant to exercise the executive power, but as the international (or inter-imperial) status of Canada underwent a change, what is now meant is *not the Imperial Crown,* but the *Canadian Crown.* In fact, as in this executive branch of the Canadian Government so in all other branches, the written articles do not constitute, "a guide to the constitutional practice of the present day." Like England, Canada has a large number of constitutional conventions and without a study of these, the actual

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[1] *Constitutional Issues in Canada*, p. 239.

administrative machinery cannot be understood.

Privy Council of Canada. Art. 11 of the Act lays down: "There shall be a Council to aid and advise in the Government of *Canada* to be styled the Queen's Privy Council for *Canada*; and the Persons who are to be Members of that Council, shall be from Time to Time chosen and summoned by the Governor-General and sworn in as Privy Councillors, and Members thereof may be from Time to Time removed by the Governor-General." In no other respect does the Canadian constitution follow the British model so much as in the institution of a *Canadian Privy Council*. But the Canadian Privy Council does not perform judicial functions.

Cabinet is the real executive. And again the actual practice in Canada is that the Governor-General appointed by Letters Patent and with Royal Instructions really occupies the position of a constitutional executive head. There is an Executive Council, the Dominion Cabinet, consisting of ministers of the (Canadian) Crown with a Prime Minister at its head. The Cabinet is composed of leaders of the majority party in the House of Commons. In selecting his colleagues, the Prime Minister, who is appointed by the Governor-General in the same way as the British Sovereign appoints the Prime Minister in England, always makes his selection in such a way that every important province is represented in the Cabinet. Though strict adherence to this principle sometimes results in keeping out the best persons, the federal character of the Cabinet constitutes a guarantee for keeping a majority of the House behind it. The Cabinet is responsible to the House and must resign if the House passes a no-confidence motion or fails to support its policy. But if he likes the Prime Minister may request the Governor-General to dissolve the House and hold a general election in order to ascertain the will of the Canadian people. Formerly, such requests for dissolution were sometimes refused, *e. g.*, in 1858 and 1860. The Governor-General also declined to abide by the Prime Minister's advice in exercising prerogative of pardon in 1875. But things have now changed with the lapse of time. The progress in the relations between the Governor-General and the Cabinet has been almost continuous. "The Governor-General like the King in Britain, has always been the central figure in Government of Canada. His history, like that of his illustrious prototype, has been a study, unsensational, rather, reluctant progress from virtual dictatorship to virtual importance."[1]

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[1] *Constitutional Issues in Canada*, pp. 65-66.

And this change has affected not the letter of the constitution which remains in theory almost the same as it was in 1867, but only the constitutional practice. "The specific grants of the Governor's authority and those powers which were his through usage were either formally altered, (*e. g.*, by changes in the Commission and instructions in 1878 amended in 1931 and 1935) or, more commonly, quietly abandoned. Precedents fell rapidly away on the one side and multiplied on the other. The driving force behind the movement was the insistence by the Canadian people on a greater measure of self-government. This attacked the position of the Governor-General from two directions: the desire for a more democratic control of the Government necessarily weakened his position as its only irresponsible element, while at the same time the growth of the national autonomy narrowed his functions as an Imperial officer."[1] And thus the real executive power in Canada has now passed into the hands of a responsible Cabinet which guides the legislature, governs the country and otherwise occupies the same position in Canada as the British Cabinet does in Britain. The Canadian cabinet works on the same principles as the British Cabinet—secret meetings, collective responsibility to the Commons, and preparation of budget. Even the appointment of the Governor-General is made by His Majesty in consultation with the Canadian Cabinet with which he is to associate himself as a constitutional head. He has, in this manner, ceased to be an officer of the British Government.

Composition of the Cabinet. The Cabinet is thus the real governing body in the dominion. It consists of 20 ministers at present. These are: Prime Minister and President of the Executive Council; Minister of Mines and Resources; Solicitor General; Minister of Veteran's Affairs; Secretary of State for External Affairs; Minister of Justice and Attorney General; Minister of Public Works; Minister of Finance; Postmaster-General; Minister of Trade and Commerce; Secretary of State; Minister of National Defence; Minister of National Health and Welfare; Minister of Pensions; Minister of National Revenue; Minister of Fisheries; Minister of Labour; Minister of Transport; Minister of Agriculture; Minister without portfolio. The Prime Minister gets a salary of 15,000 dollars a year, other Ministers with portfolio get 10,000 dollars a year.

There are also some under-secretaries. The Cabinet stands as a solid

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[1] *Ibid.* p. 66.

body and is jointly responsible to the House, though the ministers are not absolved from their individual responsibility. The Cabinet works on the principle of party-system as in Britain.

Civil Service. While the Cabinet guides the general policy of the government, the detailed working is left to officers of the Civil Service. There is in Canada, an independent body of the Civil Service Commissioners who are independent members, being removable only on address from both houses; they have wide powers of examination; and promotions are in theory in their hands, though a voice is given to the deputy head of the department.[1] The system is not perfectly free from defects, particularly because the ministry cannot easily exercise the right of dismissal for inefficiency and incompetence. Prior to 1919 such dismissals were wholesale and almost discreditable, following a general election. But now security in service has been guaranteed by the appointment of the Commission.

The Canadian Judiciary

In the early days of British North America the judiciary was not the independent branch of administrative machinery it should have been; "the judges took an active part in politics and were strong allies of the governing clique in the colonies." They took part in the executive as well as the legislature. This system had its obvious defects and the subsequent demand for responsible government contained also a demand for an independent judiciary after the British model. Even Lord Durham, in his memorable Report, complained of the miscarriage of justice due to racial animosities of the French and the English settlers. He stated: "The course of justice is entirely obstructed by the same cause; a just decision in any political case is not to be relied upon; even the judicial bench is, in the opinion of both races divided into two hostile sections of French and English, from neither of whom justice is expected by the mass of the hostile party".[2] Since Lord Durham wrote, things have entirely changed. Both custom and statute have successfully worked "to preserve and develop the tradition of judicial freedom and impartiality," and in this respect too British traditions have very largely influenced Canadian history.

Four Grades of Courts. At present there are four grades of

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[1] Keith, *The Constitutional Law of the British Dominions*, p. 185.

[2] Lord Durham in his Report on the Affairs in Canada.

courts in Canada. At the apex of the ladder is the Supreme Court of Canada, established under a parliamentary statute, whose nine judges are appointed by the Governor-General, and who hold office during good behaviour. They can be removed only on address from both houses of the legislature. The Supreme Court exercises the power of judicial review. There is another Dominion Court, namely the Exchequer Court, which is also under the central government. Then there are in the provinces the provincial Superior Courts and under them the Country and District Courts, all of which are under the authority of the Dominion for purposes of appointment, removal and salary, all other matters falling within the competence of the respective provincial governments. Lastly, there is the fourth and the lowest step in the ladder, the minor provincial courts which are entirely under provincial control. The Supreme Court of Canada is the highest appellate court for the Dominion to which appeals may be preferred from the decisions of the provincial Superior Courts. The number of appeals from the decisions of the Superior Courts or the Supreme Court to the Judicial Committee was being restricted with the awakening of national pride in Canada. And now the system of appeals to the Privy Council has been abolished since 1950. When such appeals were heard in the Privy Council a Canadian judge always sat on the bench.

Provincial Governments

The Dominion of Canada is composed of ten provinces and Yukon and the North-West Territories as given below:

Provinces	Total land and water area in Sq miles	Population in 1951
Prince Edward Island ..	2,184	98,429
Nova Scotia ..	21,068	642,584
New Brunswick ..	27,985	515,697
Quebec ..	594,860	4,055,681
Ontario ..	412,582	4,614,417
Manitoba ..	246,512	776,541
British Columbia ..	366,255	1,165,210
Alberta ..	255,285	932,501
Saskatchewan ..	251,700	831,728
Newfoundland ..	42,734	361,416
Yukon ..	207,076	9,026
North-West Territories (under federal control) ..	1,304,903	16,004
TOTAL ..	3,733,144	14,009,429

Their Powers. The British North America Act 1867 contains specific provisions regarding the form of the provincial constitutions in general as well as the special powers of the various provinces. Accor- ding to section 92 of the Act, the provincial legislatures have exclusive legislative powers in relation to all matters coming within the follow- ing classes of subjects.

(1) The amendment from time to time, notwithstanding anything in this Act, of the constitution of the Province, except as regards the office of the Lieutenant-Governor.

(2) Direct taxation within the Province in order to the raising of a revenue for provincial purposes.

(3) The borrowing of money on the sole credit of the province.

(4) The establishment and tenure of provincial offices and the appointment and payment of provincial officers.

(5) The management and sale of the public lands belonging to the Province and of the timber and wood thereon.

(6) The establishment, maintenance, and management of public and reformatory prisons in and for the Province.

(7) The establishment, maintenance and management of hospitals, asylums, and charities, elemosynary institutions in and for the Province, other than marine hospital.

(8) Municipal institutions in the Province.

(9) Shop, saloon, tavern, auctioneer and other licences in order to the raising of a revenue for provincial, local, or municipal purposes.

(10) Local works and undertakings other than such as are of the following classes:

(a) Lines of steam or other ships, railways, canals, telegraphs, and other works and undertakings connecting the Province with any other or others of the Provinces, or extending beyond the limits of the Province;

(b) Lines of steamships between the Province and any *British* or foreign country;

(c) Such works as, though wholly situate within the Province, are before or after their execution declared by the Parliament of *Canada* to be for the general advantage of Canada or for the advantage of two or more of the Provinces.

(11) The incorporation of companies with provincial objects.

(12) The solemnisation of marriage in the Province.

(13) Property and civil rights in the Province.

(14) The administration of justice in the Province, including the

constitution, maintenance, and organisation of provincial courts, both of civil and of criminal jurisdiction, and including procedure in civil matters in those courts.

(15) The imposition of punishment by fine, penalty, or imprisonment for enforcing any law of the Province made in relation to any matter coming within any of the classes of subjects enumerated in this section.

(16) Generally all matters of a merely local or private nature in the Province.

Besides exercising the above exclusive legislative powers, a provincial legislature can make laws in relation to education within the province subject to certain conditions which restrict the authority of the provincial government. Again, the Dominion Parliament may make uniform law relative to property and civil rights in Ontario, Nova Scotia, and New Brunswick. A provincial legislature may make laws relative to agriculture and immigration into the province. There is thus a very large field for concurrent legislation.

Provincial Legislatures. Each Province has its own legislature consisting of the Lieutenant-Governor and of one or two houses.[1] The Act makes full provisions regarding the constitution and powers of these legislatures.

A provincial legislation may, however, be refused assent by the Governor-General, in which case it ceases to have any force. This veto on provincial legislation by the Dominion Government gives the provinces a distinctly subordinate status within the federation.

Provincial Heads. The head of the provincial government is a Lieutenant-Governor appointed not by the British Sovereign but by the Dominion Governor-General, practically on the advice of his Cabinet. A Lieutenant-Governor may also be removed from office by the Governor General. This further delimits the status of the Provinces. The Provincial Lieutenant-Governor is merely a constitutional head of the provincial government; the real executive power lies in the hands of the provincial cabinet which is responsible to the provincial legislature.

In each province there are the Superior and County or District Courts which are partly under Dominion Government, *e. g.*, with regard to appointment, removal and emoluments of the judges. Then

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[1] Except Quebec which has a bicameral legislature (an Assembly and a Council) every other province has a unicameral legislature called Assembly.

there are the minor provincial courts which are exclusively under the authority of the provincial governments.

To sum up, the provincial governments in Canada occupy a more restricted status than is warranted by the federal character of the Dominion. The Central Government, besides possessing large legislative powers, also enjoys all residuary powers. It can veto (subject to statutory restrictions) provincial legislation. It appoints and can remove from office provincial Lieutenant-Governors, though so far only two cases of such removal have happened. It also exercises some control over the higher grade of provincial judiciary. The allotment of sources of revenue leaves little scope for provincial governments which occasionally receive doles from the Central Government. And lastly, the judgments of the Supreme Court (which possesses the power of judicial review) have also restricted the powers of the provinces.

Amendment of the Constitution

As already said, the federal constitution of Canada is the result, to a very great extent, of differences in the interests of the several provinces. The major conflict between the French and the English settlers brought about this compact between the four provinces, though the other provinces joined the federation without the strict application of a compact theory. Naturally, therefore, the British North America Act, 1867, did not empower the Parliament nor the several provincial legislatures to make constitutional changes, lest the interests of any provinces be affected thereby. Hence the Act provided that all constitutional amendments would be made only by the British Parliament. Even the admission of new provinces into the federation was made on addresses from the Canadian Parliament by an Act of the Imperial Parliament. Though the Imperial Parliament, in doing so, respected the views of the Canadians expressed not only through the Dominion Parliament but also through the various provincial legislatures, yet in theory the right of amending the Canadian constitution had not till 1949 been conceded to that Dominion. Even the Statute of Westminster while otherwise extending the legislative powers of the Dominion Parliaments, by removing some of the restrictions, had made a special reservation in case of Canada. Section 7 of the Statute runs:

7, (1) *Nothing in this Act shall be deemed to apply to the repeal, amend-*

ment or alteration of the British North America Acts, 1867 to 1930, or any order, rule or regulation made thereunder.

Thus, while the Statute confers upon the Canadian Parliament the power to legislate even against any Imperial Act, in so far as that Act relates to the Dominion, an exception has been made in the case of the various British North America Acts passed between the years 1867 and 1930, laying down or amending the constitution of that Dominion. And, as Prof. Keith remarks, "to make assurance doubly sure" the same section of the Statute further says:

(2) *The Provisions of section two*[1] *of this Act shall extend to laws made by any of the Provinces of Canada and to the powers of the legislatures of such provinces.*

It is curious to note here that though the British North America Act, 1867, gave larger powers including residuary powers to the Dominion Parliament of Canada than to the provincial legislatures, and though it made the Dominion government comparatively more powerful, yet the Statute of Westminster treated the provinces in a different way and extended the powers of their legislatures within their territories. This was obviously done to satisfy the people of the province of Quebec. Since the beginning of 1950, the Canadian Parliament has acquired the power to amend the constitution which cannot now be amended by the British Parliament.

The provincial legislatures of Canada have now power to make changes in their respective provincial constitutions except that they cannot touch the position and powers of the Lieutenant-Governor.

Political Parties

As in Britain so also in Canada Political parties are quite unknown to the written constitution, and their organisation and functions are almost entirely extra-legal. The necessity of controlling any party activities by law, which has become so important in the United States, has not yet been felt in Canada, chiefly because party abuses, while frequent, have rarely been grossly oppressive and corrupt. Yet these uncontrolled, irresponsible, semi-secret bodies are in many respects the real government of Canada. "The organisation and leaders of the majority party are the driving power in and behind the Government; they are the pistons, spark plug,

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[1] For Section 2 of the *Statute of Westminster. See ante* p. 271.

carburettor, and what not, well concealed under an ornamental hood, which drive the car, and the exact functioning of which can be adequately understood only by those expert mechanics who devote a life time to such work"[1]. In these words, Prof. Dawson describes the importance of political parties in the Canadian system.

True to their spirit, the Canadian statesmen adopted, in the very early days of the federation, the party system of the mother country and named their own parties as Conservatives and Liberals. The Canadians had to work a parliamentary system of government which necessitated the formation of political parties with definite programmes. In Canada, however, the main items in the party programmes have been included by "a sheer chance of the cards." Thus the Conservatives became protectionists and the Liberals opposed a protectionist system. Chance has again and again entered into Canadian politics to divide the two parties. One important factor concerning party government in Canada is the long continuance of the same party in office and in power. But when once the party in power has been ousted, the other has stepped in and remained in power for a long time.

It is only during the last twenty years that political parties have acquired a very great prominence, due partly to the advent of the Labour Party and partly to the organisation of the Farmers into a political body with definite objects.

Farmers' Party. We may briefly describe here the aims of the various political parties in Canada. The Farmers' Platform (1918) included these items: permanent peace in the world ; opposition to Imperial control, and insistence on equal partnership in the Commonwealth; development of natural resources, particularly agriculture; reduction of tariff all round; increase in national revenues by imposing a direct tax on unimproved land values, a graduated personal income tax, a graduated inheritance tax on large estates and levying and collecting of business Profits Tax on actual cash invested; relief of the unemployed through federal, provincial and municipal machineries; extension of agricultural co-operative agencies; a greater measure of democracy in government by repeal of War-Time Elections Act, discontinuance of confirment of titles, reform of the Senate, abolition of patronage, publication of election expenses, freedom of the press, proportional representation, introduction of referendum, initiative

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[1] *Constitutional Issues in Canada*, p. 357.

and recall, and eligibility of women for election to Parliament. Some of these beneficial measures have already been introduced, yet the Farmers' Party has much to fight for in the future.

Labour Party. The Labour Party, loyal to its name in Canada as in other parts of the world, places 'Human Needs' above 'Property Rights'. It advocates nationalisation of natural resources; public ownership of public utilities and large-scale industries, nationalisation of banking system; establishment of a high standard of living with provision for social insurance, provision of work for the unemployed or grant of maintenance to them; provision for returned soldiers, equal rights of citizenship for all irrespective of sex, class, origin or religion, restoration of civil liberties including freedom of speech, of the press, of assembly or of association; repeal of the Immigration Act, and right of Labour to organise itself; removal of taxes from necessaries of life; taxation of land values, exemption of small income from taxation; proportional representation; abolition of the Senate; opposition to all forms of militarism; national disarmament, and development of a Democratic League of Peoples.

Conservatives and Liberals. The programmes of the Conservatives and Liberals are rather halting. Though they have much in common, their differences relate to tariffs, policy towards labour, and other minor points. "The cold truth is that a certain bewildering incoherence persists in the ideas and policies of both our historic parties. The Liberals favour a robust political nationalism and profess a disposition to reject the economic nationalism embodied in the protectionist creed. The Conservatives on their part pour scorn upon political nationalism but are jealous devotees of the economic brand of nationalism."[1] But when closely examined these two kinds of nationalism, economic and political, are merely twin-sisters with little difference. So that the only real difference between the ideals of the Liberals and Conservatives is that of free trade *versus* protection. Both of them advocate higher status for Canada in international matters.

The leaders of the political parties maintain sufficient control over the party machinery and try to work it according to the well-established parliamentary practice.

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[1] Stevenson in *Queen's Quarterly, Spring*, 1929, p. 361.

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14

THE COMMONWEALTH OF AUSTRALIA

The opening words of the preamble proclaim that the constitution of the Commonwealth of Australia is founded on the will of the people, it is clothed with the form of law by an Act of the Imperial Parliament of Great Britain and Ireland.

—QUICK AND GARRAN

History of the Constitution

Extent and Population. Australia is an entirely colonised island continent. It is the smallest of all the continents, having an area of 2,974,581 square miles and a population estimated at 8,962,281, on March 31, 1954. It differs from other continents in several respects also. It has almost exclusively British population, the percentage of British colonists being as high as 98. It has a vast plain which is neither fertile nor otherwise rich in natural resources.

Discovery of the Continent and Formation of Colonies. It was discovered by Captain Cook, and the first colonisation began in 1788 when the colony of New South Wales was established. The few colonists started agriculture along the fertile strip of coastland but the prospect of gold and silver mines, later on, attracted a large number of immigrants from Britain. Entry into the interior began later, but for a long time all the settlements continued under one central administration at Sydney. The subsequent increase in the population necessitated the separation of Tasmania (then called Van Diemen's Land) in 1825. Afterwards, Victoria also separated from New South Wales in 1850. When in 1848 the proposal of the separation of Victoria received the assent of the Colonial Secretary, Earl Grey, he spoke some prophetic words relating to the future of Australia. He said: "It is necessary that while providing for local management for local interests we should not omit to provide for the central management of all interests not local....there are questions which, though local in

Australia collectively, are not merely local in relation to one colony, though each may have part in a common interest." And for the handling of such matters he expressed the necessity of a central administration in Australia.

Australian institutions borrowed from England. The early colonists belonged to 'the middle and upper sections of the working class' and by sheer dint of their enterprise they developed the resources of the country. Though they were not men already versed in the actual administration of parliamentary government, they did certainly have the British tradition with them. When the Mother Country gave the Australian colonies representative self-governing institutions, the colonists adapted them to the new conditions in their new homes with slight changes from the English model. Thus New South Wales, Victoria, South Australia, and Tasmania became self-governing colonies in 1855-56, Queensland in 1859-60 on separation from New South Wales, and, lastly, Western Australia in 1890. The Parliamentary Acts embodied all the important features of the constitutions which the Councils of the various colonies had prepared for the purpose, and in this way the colonists had to work the models of their own making.

Character of Australian democracy. Viscount Bryce has admirably described the character of Australian democracy in these words: "There is no such thing as a Typical Democracy, for in every country physical conditions and inherited institutions so effect the political development of a nation as to give its government a distinctive character. But if any country and its government were to be selected as showing the course which a self-governing people pursue free from all external influences and little trammelled by intellectual influences descending from the past, Australia would be that country. It is the newest of all the democracies. It is that which has travelled farthest and fastest along the road which leads to the unlimited rule of the multitude. In it, better than anywhere else, may be studied the tendencies that rule displays as it works itself out in practice".[1]

Beginning of Federal Idea. Though the earlier tendencies of Australian democracy were towards the unitary type, each colony having its independent government, subsequent events particularly the occupation of New Guinea by Germany, the escape of French convicts into

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[1] *Modern Democracies*, vol, II, p. 181.

Australia from the penal settlement in New Caledonia, and the intention of France to extend her rule into the New Hebrides group of islands brought home to the Australians the necessity of some kind of co-operation between the colonies in order to safeguard their future. The Colonists had before them the example of the provinces in Canada which had been united into a federation in 1867, as also the earlier example of the United States of America. Sir Henry Parkes, the leader of the Free Trade Party in New South Wales, seriously took up the cause of Australian federation.

Powers and functions of the Federal Council. In 1883, the British Parliament passed the *Federal Council of Australia Act* which gave the colonies a Federal Council. This Council had legislative power over the relations of Australia with the Island of the Pacific; the prevention of the influx of criminals; fisheries in Australian waters beyond territorial limits; the service of process; and the enforcement of judgments beyond the limits of a colony. It also enjoyed derivative power over defence, quarantine, patent law, copyright, bills of exchange, marriage and divorce, naturalisation, and other matters which any two or more colonies might agree to refer to it.[1] It was expected that a successful working of this Act for some years would pave the way for the establishment of an Australian federation. But the Federal Council failed to achieve the expected results. Besides the indifference of New South Wales and South Australia, both of which refrained from joining the council, it had several other defects. Its members were nominees of the colonial governments; it could neither raise nor maintain an army. It could make laws but had no power to enforce them. Its membership was optional and not binding on the colonies.

Federal Idea receives a new stimulus. But a few years later, in 1889, the publication of the report of Major-General Bevan Edwards who had been appointed by the Imperial Government to inspect and report upon the defences of Australia, gave a new impetus to the effort for an Australian union. He had recommended the organisation of a single Australian union of the several colonies in Australia. Sir Henry Parkes then again took up the federal cause and sent a circular telegram to the premiers of all the Australian Colonies emphasizing the need for general military organisation, relaxation of tariff barriers between

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[1] Bryce, *Constitutions*, p. 574.

the colonies and uniformity of law relating to certain important matters. In response to his invitation, the colonial ministers met in a conference at Melbourne and thereafter in a convention at Sydney (1891). At the last meeting they prepared a draft of Commonwealth Bill but, due to lack of popular support, much could not be done. To educate public opinion on the question, a federal league was established which carried on an intensive propaganda throughout the continent in favour of a federal union. In 1893, Australia faced a financial crisis, which proved a blessing in disguise as it showed the urgent necessity of some kind of close relationship between the colonies. The colonial premiers met at Hobart (1897) to discuss the situation, and finally they appealed to the colonial governments to send delegates to meet in a constituent convention. This was accepted by the governments of the colonies; the convention met at Adelaide, and drew up a draft constitution mainly based upon that of 1891. It decided to put the draft to a referendum prescribing a certain minimum majority in each colony to make the draft binding. And though the referendum resulted in a favourable verdict for the draft in all the colonies, New South Wales failed to record the prescribed minimum of 80,000 favourable votes the actual voting being 71,965 against 66,228. Another effort was made to win the support of Mr. Reid, the Premier of New South Wales, and a few amendments were made in the draft. It was again put to vote on June 10, 1899, and passed by an overwhelming majority in each colony. Practical unanimity had thus been secured among the colonies and the time was now ripe for seeing the fruition of the movement after the bitter struggle lasting well over a decade.

Making of the Federation. Representatives of colonial governments went over to England and there succeeded in prevailing upon the British Government to give effect to their desire for union by accepting the draft constitution almost *in toto*. The Right Hon. Joseph Chamberlain, the then Secretary of State for the Colonies, introduced the Commonwealth of Australia Bill (14 Mar. 1900) in Parliament. In his opening speech he thus described the merits of an Australian union: "This Bill, which is the result of the careful and prolonged labours of the ablest statesmen in Australia, enables that great island continent to enter at once the widening circle of English speaking nations. No longer will she be a congeries of states, each of them separate from and entirely independent of the others, a position which anyone will see might possibly in the future, through the natural consequences of competi-

tion, become a source of danger and lead, at any rate, to friction and to weakness."[1]

Hopes from the Federation. After discussing the result of a common Australian policy embodied in the bill, he said: "We believe that it is in the interest of Australia, and that has always been with us the first consideration. But we recognise that it is also in our interest as well; we believe that relations between ourselves and those colonies will be simplified, will be more frequent and unrestricted, and, if it be possible, though I hardly think it will be more cordial when we have to deal with a single central authority instead of having severally to consult six independent Governments. Whatever is good for Australia is good for the whole British Empire."[2] Speaking of the necessity of the acceptance of the Bill which the statesmen of Australia had themselves prepared he said: "The bill has been prepared without reference to us. It represents substantially and in most of its features the general opinion of the Australian people;. . we recognise that they are the best judges in their own case, and we are quite content that the views of their representatives should be in these matters accepted as final; and the result of that is that the Bill which I hope to present to the house tonight is, so far as ninety-nine hundredths of it, I think I might almost say nine hundred and ninety-nine hundredths of it is concerned—as regard the vast proportion of the Bill—exactly the same as that which passed the referendum of the Australian people."[3] And with slight alterations, the draft Bill was enacted by British Parliament as the *Commonwealth of Australia Act, 9th July*, 1900. This Act embodies the present federal constitution of Australia.

The Constitution of 1900

Nature of the Constitutional Problem. The framers of this constitution had before them three distinct federal constitutions working in the world--the United States of America, Switzerland and Canada—and in solving their own constitutional problem they tried to benefit by the experience of these countries. Like the U. S. A., but unlike Canada or Switzerland, Australia had no linguistic, racial or

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[1] Newton : *Federal and Unified Constitutions*. pp. 311-12.
[2] *Ibid*. pp. 312-13.
[3] *Ibid*. pp. 316-17.

religious differences to tackle. The people being hardy and enterprising, their material interests dominated their politics ; in Australia "the labouring masses first gained control of the legal government and displayed their quality as rulers." The state undertook to extend its influence to all industrial enterprises by fixing, by law, the rates of wages and hours of work. The people generally being those of the middle classes and there being no native problem of any importance to solve, they succeeded in establishing a constitution, which, because of its merits, had rightly been called "the latest birth of time."

Federation comes into being. As the Preamble to the Constitution states, "the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland." That is, although the constitution is the result of an enactment by the British Parliament, it really derives its authority from the *people* of the federating colonies. It establishes a *Commonwealth*, a term that connotes a more democratic polity than a mere *federation*, and the union is declared to be *indissoluble* thus putting a stop to the issue of secession.[1] Western Australia had not been so much in favour of joining the federation, hence the Parliamentary Act (as the Preamble shows) did not mention this colony as forming a part of the Commonwealth ; it only provided for admission of new members (vide sections 121-124). But after the bill had received the Queen's assent on 9th July, active steps were taken in Western Australia for joining the Commonwealth. The question was referred to the people who voted for union by a majority of 25,109, the actual voting being 44,800 for union and 19,691 against it. The Queen, therefore, by a Proclamation on 17th September, 1900, appointed the first day of January, 1901, for putting the Constitution into operation. It was the first day of the twentieth century—a dramatic and significant date for the birth of 'Australian nationhood.' Truly the latest birth of time!

A Union between Independent States. Before federating, the States in Australia were all independent in their internal administration and hence very reluctant to sacrifice their independence. Consequently, they adopted the principle of the U. S. A. constitution with regard to the division of powers. Only specific powers were given to

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[1] Contrast with this the later unsuccessful demand of Western Australia for secession from the Commonwealth.

the central government.

It is the most democratic of all the modern constitutions and gives ample power to the people in many matters, *e. g.*, the election to the Senate, the amendment of the constitution (by means of a referendum) and the solving of a continued deadlock between the two chambers of the federal legislature.

The Australian constitution differs from, as well as resembles, the federal constitutions of other countries in several respects as described later.

The Federal Government

Powers of the Federal Government. The constitution sets up a central federal government with specific powers, legislative, administrative and judicial. As the central government (the Federal Government) is the creation of the States all residuary powers belong to the latter. Though this was considered to be the best solution of the Australian constitutional problem, at the time, experience has shown the same error of distrusting the Federal Government was committed in this case as was done in America. The working of the constitution has proved that "the simplest of intentions, in constitutional writing, will prove frustrate if embodied in complicated and qualified wording. Especially did this prove to be the case in the matter of this fiscal and economic subjection, intended by the Constitution, of the subordinate states to the Federal authority."[1]

The legislative powers of the Federal Government extend to the following matters:

(1) Trade and commerce with other countries, and among the States.

(2) Taxation but so as not to discriminate between States or parts of States.

(3) Bounties on the production or export of goods, but so that such bounties shall be uniform throughout the Commonwealth.

(4) Borrowing money on the public credit of the Commonwealth.

(5) Postal, telegraphic, telephonic and other like services.

(6) The naval and military defence of the Commonwealth and several States, and the control of the forces to execute and maintain the laws of the Commonwealth.

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[1] *Select Constitutions of the World*, p. 357.

(7) Lighthouses, lightships, beacons, buoys.
(8) Astronomical and meteorological observations.
(9) Quarantine.
(10) Fisheries in Australian waters beyond territorial limits.
(11) Census and statistics.
(12) Currency, coinage and legal tender.
(13) Banking, other than State banking, also State banking extending beyond the limits of the State concerned, the incorporation of banks and the issue of paper money.
(14) Insurance, other than State insurance; also State insurance extending beyond the limits of the State concerned.
(15) Weights and measures.
(16) Bills of exchange and promissory notes.
(17) Bankruptcy and insolvency.
(18) Copyrights, patents of inventions and trade designs, and trademarks.
(19) Naturalisation and aliens.
(20) Foreign corporations, and trading and financial corporations formed within the limits of the Commonwealth.
(21) Marriage.
(22) Divorce and matrimonial causes and in relation thereto parental rights, and the custody and guardianship of infants.
(23) Invalid and old-age pensions.
(24) The service and extension throughout the Commonwealth of the civil and criminal process and the judgments of the courts of the States.
(25) The recognition throughout the Commonwealth of the laws, the public Acts, and records and the judicial proceedings of the States.
(26) The people of any race, other than the aboriginal race in any State, for whom it is deemed necessary to make special laws.
(27) Immigration and emigration.
(28) The influx of criminals.
(29) External affairs.
(30) The relations of the Commonwealth with the islands of the Pacific.
(31) The acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws.
(32) The control of railways with respect to transport for the naval and military purposes of the Commonwealth.

(33) The acquisition with the consent of a State, of any railways of the State on terms arranged between the Commonwealth and the State.

(34) Railway construction and extension in any State with the consent of that State.

(35) Conciliation and arbitration for the prevention of any settlement of industrial disputes extending beyond the limits of any one State.

(36) Matters in respect of which this Constitution makes provision until the Parliament otherwise provides.

(37) Matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States, but so that the law shall extend only to State or States by whose Parliaments the matter is referred, or which afterwards adopt the law.

(38) The exercise within the Commonwealth at the request or with the concurrence of the Parliaments of all States directly concerned, of any power which can at the establishment of this Constitution be exercised only by Parliament of the United Kingdom or by the Federal Council of Australia.

(39) Matters incidental to execution of any power vested by this Constitution in the Parliament or in either house thereof, or in the Government of the Commonwealth or in Federal Judicature, or in any department or officer of the Commonwealth.

Its additional powers. Besides the above-mentioned powers, the Federal Parliament has exclusive powers of legislation with respect to the seat of Government of the Commonwealth, and all places acquired by the Commonwealth for public purposes; matters relating to any department of the public service the control of which is by this Constitution transferred to the executive Government of the Commonwealth, other matters declared by this Constitution to be within the exclusive power of Commonwealth Parliament.

Direct control of territories under the Federal Government. The Commonwealth Government directly administers several territories. The Northern Territory, lying to the North of South Australia was ceded by it to the National Government on 1st January, 1911. Its area is 5,23,620 square miles and population only 12,868. Papua (formerly called British New Guinea) came under federal administration on September 1, 1906, under the terms of the *Papua Act*; it has an area of 90,540 sq. miles, and a population estimated at 3,03,239. A part of New Guinea, formerly under Germany, was

acquired by the Commonwealth (1920) as a mandated territory under the Treaty of Versailles. The federal territory containing the Federal Capital of Canberra was acquired by the federal government from New South Wales in 1911 for establishing federal capital. It has an area of 939 sq. miles and a population of 16,905. The seat of the federal government was formally transferred to Canberra in 1927. The Commonwealth has made separate arrangements for the administration of all these territories over which its power is complete.

Financial powers of the Federal Government. With regard to finance the Commonwealth Government has larger powers than the central government in the United States. It has unlimited power of imposing taxation, provided that these taxes apply equally to all the States. It has full control over customs, duties and tariffs. The then existing debts of the States were taken over by the Federal Government which also took the power to borrow money. But for ten years after the establishment of the federation, only one quarter of the proceeds of customs duties were retained by the Federal Government, the remainder having been handed over to the States each month.

Thus the Commonwealth Government possesses larger powers than the U. S. A. central government but fewer than the Dominion Government in Canada. It is also true that with the advent of the labour party in Australia the tendency towards a greater centralisation of the government is on the increase; whereas in the United States of America the decisions of the Supreme Court have very much strengthened the central government. The component parts in the Australian Commonwealth are called States, as in the U. S. A., indicating a higher status than the provinces in Canada.

The Commonwealth Legislature

King in Parliament exercises Legislative Powers. The legislative power of the central government of Australia is vested in a Parliament consisting of the King, the House of Representatives and a Senate. The King is represented in the Commonwealth by a Governor-General who exercises such powers as are assigned to him by His Majesty. The Governor-General appoints the times when the Parliament meets and also prorogues it by proclamation, and in the same way dissolves the House of Representatives. The Parliament meets at least once a year, so that twelve months do not intervene between

the last sitting of the Parliament in one session and its first sitting in the next.

Senate of Australia. Originally, the Commonwealth Senate, (the Upper Chamber of the Federal Legislature) consisted of 36 Senators, six from each of the six part-States. But by the Representation Act of 1948 the strength of the Senate has been raised to 60, ten from each State. Senators are chosen for six years, half the Senators of each State retiring every three years. It is thus a continuous body.

How formed. For the election of the Senators each State forms a single constituency, but each voter can vote only once. But it may be dissolved earlier in the event of a deadlock between the two chambers. There are several other features of Australian Senate which go to make it the most democratic of all the federal senates in the world. Each adult citizen is a qualified voter for the Senate and any person eligible to sit in the House of Representatives can seek election to the Senate. In this respect, the Australian Senate is far more democratic than the Canadian Senate which is composed of senators appointed by the Governor-General, holding their seats for life and possessing a very high property qualification.

Does the Senate represent State sovereignty? The equal representation of the States in the Commonwealth Senate meant a recognition of the former's sovereignty, as well as a guarantee for the protection of State rights. The actual working, however, of the Parliament has been quite different. "All the expectations and aims wherewith the Senate was created have been falsified by the event. It has not protected State interests, for those interests have come very little into question.....Neither has it become the home of sages, for the best political talent of the nation flows to the House of Commons, where office is to be won in strenuous conflict....Not having any special functions, such as that control of appointments and of foreign policy which gives authority to the American Senate, its Australian copy has proved a mere replica, and an inferior replica, of the House".[1]

Casual vacancies in the Senate: how filled. If the place of a Senator becomes vacant before the expiry of his term, the Houses of Parliament of the State concerned may in a joint session elect a person to fill the vacancy for the residue of the term. But if the State Parliament is not in session, the State Governor may, with the consent of the State

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[1] *Modern Democracies*, vol. II, p. 204.

Executive, appoint a person who can retain the place "until the expiration of fourteen days after the beginning of the next session of the Parliament of the State, or until the selection of a successor, whichever first happens." If a Senator fails to be present in two consecutive sessions, he loses his seat. Any Senator may resign his seat by addressing his resignation to the President or in the latter's absence to the Governor-General.

Quorum and voting. The Senate choose its own President; one-third Senators forming a quorum. All questions in the Senate are decided by a majority vote, each Senator having only one vote. The President has always a vote, but when the votes for and against a motion are equal, the question is decided in the negative.

The House of Representatives. The House of Representatives consists of, at present, 121 members, distributed according to population; New South Wales having 47, Victoria 33, Queensland 18, South Australia 10, Western Australia 8, and Tasmania 5. Under the Act of 1922, one member, without the right to vote, sits for the Northern Territory and similarly one for the Capital Territory. The life of the House is three years but it may be dissolved earlier by the Governor-General on the advice of the cabinet, subject to statutory conditions and well-established constitutional practice. All adult persons, male and female, are eligible to vote for elections to the House. A member of the House must be at least 21 years of age, a qualified elector or one entitled to be such elector, and a resident, for at least three years, of the Commonwealth. He must be a born, or naturalised (for five years), British subject.

The House elects its own Speaker. The Speaker normally has no vote, but he has a casting vote in case of a tie. All questions in the House are decided by a majority vote. The House frames its own rules of procedure.

No person can be a member at one and the same time of both the House and the Senate. A member of either house of the Parliament becomes disqualified for continuing his membership on (*i*) acknowledging allegiance to a foreign power, (*ii*) being adjudged a bankrupt or insolvent, (*iii*) being convicted of treason, and (*iv*) having any direct or indirect pecuniary interest in any agreement with the Public Service otherwise than as a member and in common with the other members of an incorporated company consisting of more than twenty-five members. Every member of the Senate and the House gets an allowance of £1,000 per mensem, and enjoys all usual powers, privileges

and immunities during his membership.

Powers of the Legislature. Both chambers have co-equal legislative powers but all "laws appropriating revenue or moneys, or imposing taxation" originate in the House. "The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or money for the ordinary annual service of the Government. The Senate may not amend any proposed law so as to increase any proposed charge or burden on the people." "The House is the vital centre of political life, but its vitality was impaired when the Labour caucus was established, for the centre of gravity shifted to that caucus in which the Labour Senators sit along with their comrades of the House".[1] Art. 57 of the Constitution provides a solution in case of a deadlock between the Senate and the House thus:

Conflicts between the two Houses: how solved. "If the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if after an interval of three months the House of Representatives, in the same or in the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate and the House of Representatives simultaneously. But such dissolution shall not take place within six months before the date of the expiry of the House of Representatives by effluxion of time.

"If after such dissolution the House of Representatives again passes the proposed law, with or without any amendments which have been made, suggested, or agreed to by the Senate and the Senate rejects or fails to pass it, or passes it with amendments to which House of Representatives will not agree, the Governor-General may convene a joint sitting of the members of the Senate and of the House of Representatives." At such a joint sitting the members may deliberate and shall vote together. They may consider the measure with or without any amendments made by one house and not agreed to by the other. Any amendment or the measure shall be deemed to have been duly passed if affirmed by "an absolute majority of the total number of the members of the Senate and the House of Representatives." This shows

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[1] *Modern Democracies*, vol. II, p. 206.

that the Commonwealth Senate has larger legislative powers than the U. S. A. or Canadian Senate; and it could not have been otherwise in view of the more democratic character of that Senate regarding qualifications of members and the method of election.

Governor-General's assent to legislation. When a law has been finally passed by the Commonwealth Parliament it must receive the Governor-General's assent before becoming effective. The Governor-General may, if he so desires, return the law to the Parliament with his own recommendation for further consideration, or reserve it for His Majesty's pleasure which must be expressed within a year. Since the passing of the Statute of Westminster, the restrictions on the legislative powers of the Commonwealth Parliament have been virtually removed.

The Commonwealth Executive

Nominal Executive. The Executive power of the Commonwealth is vested in the King (not as the Crown of the United Kingdom but as the *Crown of the Commonwealth*) and is exercised by the the Governor-General as the King's representative. The Governor-General holds command of the naval and military forces of the Commonwealth.

The Real Executive. The Commonwealth constitution, like that of Canada, provides for a Federal Executive Council "to advise the Governor-General in the Government of Commonwealth. The members of the Council are "chosen and summoned by the Governor-General and sworn as Executive Councillors", and hold office during his pleasure. In practice, the Governor-General summons the leader of the majority party in the House of Representatives, appoints him as Prime Minister and the latter then consults the important members of his party and thereafter selects his colleagues, the other ministers, who are then formally appointed as Executive Councillors by the Governor-General. There are at present nineteen Councillors including the Prime Minister, who form the Cabinet. The Prime Minister takes up any portfolio for himself. The other ministers are : Vice-President of the Council and Leader of the Senate; Minister for Commerce and Agriculture; Attorney-General; Minister for Industry, and Minister for External Affairs; Postmaster-General; Minister for Trade and Customs; Treasurer and Minister incharge of Development, and of Scientific and Industrial Research; Minister for Civil Aviation and Minister of Works; Minister for Defence; Minister of Health; Minister for

Repatriation; Minister for the Interior; Minister for Work and Housing; Minister for the Army; Minister for the Navy; Minister for Shipping and Fuel; Minister for Transport and External Territories; Minister for Immigration and Information. The Prime Minister may distribute the portfolios in any manner he likes. He presides over the Cabinet and guides its general policy. He gets a salary of £4,000 per year. There may be appointed ministers without portfolio. The Cabinet, according to the well-established constitutional practice, is responsible to the House of Representatives and resigns on losing its confidence. The Cabinet guides the general policy of administration and the members of the Civil Service (a very large number indeed, holding permanent office) carry out that general policy.

Formation of the Cabinet. In the formation of the Cabinet, the Prime Minister respects the wishes of the several States and tries to make his selection in such a way as to include at least one member from each State. The Cabinet works on the principle of joint responsibility to the Lower Chamber, but if on any matter an individual minister differs fundamentally from his colleagues he, as a man of honour, resigns. It formulates its own policy and guides the legislature. But since the advent of the Labour Party, a Labour Cabinet has been guided by the party caucus.

Thus, the effective executive power of the Commonwealth is vested in the Cabinet, though, in theory, it continues in the Governor-General-in-Council. The Governor-General who is only a constitutional head of the government and as such only a nominal executive does not attend the meetings of the Cabinet, which are presided over by the Prime Minister. The Cabinet is acquiring so much importance, by constitutional conventions, that even the appointment of the Governor-General by the King is made on its recommendation.

The Commonwealth Judiciary

The High Court and its constitution. The judicial power of the Commonwealth is vested in a *Federal Supreme Court* called the *High Court of Australia,* and other courts vested with the necessary powers by the Commonwealth Parliament. The High Court is the highest judicial tribunal in the federation. It has a Chief Justice and six more judges, all appointed by the Governor-General-in-Council holding office during good behaviour and removable by the Governor-General-in-Council only on an address from both Houses of the Parlia-

ment in the same session, praying for such removal on the ground of proved misbehaviour or incapacity. Their remuneration cannot be diminished during their continuance in office. These conditions secure independence to the judiciary and go to make it impartial. The court has earned reputation for its impartial decisions and no serious attempt has been made to make appointment by election as in most of the American States. It has appellate jurisdiction in all cases decided by the Justice or Justices exercising original jurisdiction of the High Court; cases coming to it from the inferior courts exercising federal jurisdiction; cases brought to it in appeal from the Supreme Courts of the several States, and in all such cases the decision of the High Court is final.

Powers of the High Court. If the High Court itself permits and certifies, an appeal from its decision may be taken to the Judicial Committee of His Majesty's Privy Council in England. But this does not in any way impair the right of His Majesty to grant special leave of appeal from the High Court to the Privy Council. The High Court exercises original jurisdiction in all matters arising under any treaty, cases affecting consuls or other representatives of other countries, cases in which the Commonwealth, or a person being used on behalf of the Commonwealth, is a party; between States, and between residents of different States, or between a State and a resident of another State, in which a writ of mandamus or prohibition or an injunction is sought against an officer of the Commonwealth.[1]

The Parliament may make law conferring original jurisdiction on the High Court in any matter : arising under this constitution or involving its interpretation; arising under any laws made by the Parliament; of admiralty maritime jurisdiction; relating to the same subject matter claimed under the laws of the different States.[2]

This shows that though an appeal, under certain conditions, may be preferred from the decision of the Commonwealth High Court to the Judicial Committee of His Majesty's Privy Council, this High Court resembles very much, in the matter of its jurisdiction, the U. S. A. model; and certainly its powers are larger than those of its Canadian prototype. By generally refusing permission to appeal from its decisions to the Judicial Committee of the Privy Council, the High Court has acquired great importance and independence.

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[1] Art. 75 of the Constitution.
[2] *Ibid.* 76.

Amendment of the Constitution

A democratic method. The Commonwealth constitution differs radically from the Canadian constitution, but resembles the U. S. A. constitution, in the mode of amendment. The Canadian constitution could be amended till recently by the British Parliament, at least in theory, but the Commonwealth is more democratic in this respect. The Commonwealth constitution can be amended in one of the two ways :

(1) The proposed law must first be accepted by an absolute majority of each House of the Commonwealth Parliament. Then not less than two months nor more than six months after its passage through the two Houses it must be referred in each State to the electors qualified to vote for the House of Representatives.

(2) If a proposed law is passed by one of the two Houses by an absolute majority, and the other House rejects or fails to pass it or passes it with such amendments as are not acceptable to the first House and if after an interval of three months the first House again passes the law (in the same or the next session) by an absolute majority (with or without amendments not accepted by the other House), and if the other House again persists in not passing it in the manner acceptable to the first House, "the Governor-General may submit the proposed law as last proposed by the first mentioned House, and either with or without amendments subsequently agreed to by both Houses, to the electors in each State qualified to vote for the election to the House of Representatives".[1]

When a law is thus referred to the electors, it is deemed to have been duly approved of by them if a majority of the electors voting in a majority of the States vote for it, and if a majority of all the electors voting throughout the Commonwealth also vote for it. It is then presented to the Governor-General for assent in His Majesty's name. Such assent cannot now be refused in practice.

Restrictions on Parliament's power of amending the constitution. There are, however, certain restrictions on this power of amendment enjoyed by the Commonwealth Parliament and the people, *viz.*, the proportionate representation of a State in either House of the Parliament, or the minimum number of its representatives in the House of Representatives, cannot be diminished, nor can the

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[1] *Ibid*, 129.

limits of the State or any provisions in the constitution relating to its status be altered without the approval of the majority of the electors voting in the State concerned.

Subject to these restrictions the method of amendment of the Commonwealth constitution is more democratic than that adopted in the U. S. A. or Canada, as the former recognises the sovereignty of the States and leaves the final decision with the primary electors. In this sense it very much resembles the Swiss method.

States and Local Government

There are six member-states which form the Commonwealth of Australia as a federation, with capital, area and population as given in the following table which is based on the 1954 figures.

Name of State	Capital	Area in sq. miles	Population as estimated on March 31, 1954
New South Wales ..	Sydney	309,433	2,482,019
Victoria ..	Melbourne	87,884	2,429,634
Queensland ..	Brisbane	670,500	1,274,773
South Australia ..	Adelaide	880,070	770,926
Western Australia ..	Perth	975,920	637,429
Tasmania ..	Hobart	26,215	318,967
Northern Territory ..	..	523,620	17,241
Capital Territory ..	(Canberra)	939	31,292

The Federal Government directly administers the Northern Territory, the Federal Capital Territory, Papua and the mandated territories whose area and population have already been mentioned.

States were all independent before federation. Before the passing of the Commonwealth of Australia Act, the States in Australia were all independent of each other, enjoying responsible self-government, and subject only to the authority of the British Parliament, but in no way subordinate one to the other. In this respect they resembled, to some extent, the states in the United States of America before 1777. The Commonwealth was established as a result of a

clear verdict by the inhabitants of each State. Consequently, the federal union was based upon the willing consent of the States who transferred only such powers of government to the central government as they thought necessary in the common interest of the country as a whole. The Act of 1900, therefore, recognised this independent status of the States and guaranteed the continuance of the constitution of each State "as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be, until altered in accordance with the Constitution of the State."

Powers of the States. Each State retains all powers not clearly vested by the Constitution of 1900 in the general (central) government. Such is also the status of each state in the U. S. A. on the other hand, all residuary powers belong to the Dominion Government in Canada, and the Provinces retain only such powers as are given them by the British North America Act. Moreover, the designation *State* connotes a higher status than *Province*. Thus the component parts of the Commonwealth and the U. S. A. enjoy higher status than those of Canada. A law passed by a State in the Commonwealth or the U. S. A. cannot be voted by any authority in the central government, whereas in Canada any provincial legislation may be revoked by the Governor-General. Each State in Australia, like the States in the U. S. A. but unlike the Provinces in Canada, has its own constitution, which is not a part of the Commonwealth constitution, and which the State legislature can amend subject to the provisions of the Commonwealth of Australia Act 1900.

Position of Governor as Head of the State. The head of the State administration in the U. S. A. is called *Governor*, is elected by the people and is in no way subordinate to the President of the United States; in the Commonwealth, each State has a Governor appointed by His Majesty and not responsible to the people of the State or the Governor-General of the Commonwealth; whereas in Canada the head of the *Province* is designated as *Lieutenant-Governor*, and is appointed and may be removed by the Governor-General who is undoubtedly the former's superior.

Contrast with other part-states. The State judiciaries in the Commonwealth and the U. S. A. are more independent of the federal judiciary than the provincial judiciaries in Canada. In short, the part-states in the United States of America have the largest powers and the greatest independence; the part-states of the Commonwealth are less so, and, lastly, those in Canada are the least so.

State Legislatures. Each State in the Commonwealth has a bicameral legislature, the upper house called the Legislative Council, and the lower House Legislative Assembly. Of these the Assembly is 'by far the dominant factor'. "It controls finance; it makes and unmakes ministers. To it, therefore, men of ability and ambition flow. Its importance, though reduced by the creation above it of a National Government, is still sufficient to secure among its members, specially in the largest States men of shrewd practical capacity, accustomed to political fighting, and quickly responsive to any popular sentiment."[1] But the Councils whether sitting for life or for long terms, in some cases partially renewable at stated intervals, are very quiet bodies. Their sessions are very short and, being unconcerned with the making and unmaking of ministries, less important. It is only when a deadlock arises between the two houses (which is solved in different States, either by the addition of a few nominees or by a popular referendum), that "these Councils play a subordinate and little noticed part in State politics. They do not resemble the Second Chambers (Senates) of the States in the American Union nor are they comparable to the French Senate, for they contain few men of political prominence, and do not greatly affect public opinion".[2] Still the record of their work supports the case for their existence as revising chambers "compelling the advocates of hasty change to reconsider and remodel their proposals." The legislatures work on party lines.

Legislative powers of States. The legislative powers of the States are wider than those of Canadian Provinces but not so wide as those of American States. The Australian States have legislative powers in all matters not specially given to the National Government, besides a large field of "concurrent powers" which they exercise in common with the Commonwealth Parliament. But in these matters of common legislation, if a State law is inconsistent with a law of the Commonwealth, the former becomes invalid to the extent of inconsistency. Arts. 114 and 115 further delimit the powers of a State.

Art. 114. "A State shall not, without the consent of the Parliament of the Commonwealth, raise or maintain any naval or military force, or impose any tax on property of any kind belonging to the Commonwealth, nor shall the Commonwealth, impose any tax on property of any kind belonging to a State."

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[1] *Modern Democracies*, vol. II, p. 201-2.
[2] *Ibid*, p. 283.

Art. 115. "A State shall not coin money nor make anything but gold and silver coin as a legal tender in payment of debts."

Art. 116 prohibits the Commonwealth to legislate for establishing any religion or for imposing any religious observances or for prohibiting the free exercise of any religion. The Commonwealth protects the States (vide Art. 119) against invasion or domestic violence, on the application of the State Executive.

The executive power of a State is vested in a Governor appointed directly by the King, on the recommendation of the State Cabinet. Residents of the State are now appointed as State Governors. The Governor of a State is merely the constitutional head of the State Executive, the real power lying in the hands of the State Cabinet (appointed in the usual way) responsible to the State legislature. Each State has its own judicial system with a State Supreme Court at the top, appeals from whose decisions lie to the federal High Court.

The Commonwealth Parliament may admit new States into the Commonwealth or establish new States on such terms and conditions as it may deem fit.

The States enjoy a very large measure of freedom in the Commonwealth, but recently Western Australia had adopted a hostile attitude to the union. Under the Secession Referendum Act, 1932, (passed by its legislature), a referendum was taken which resulted in favour of secession from the Commonwealth by a majority of 67,947 votes out of the total of 217,280 recorded votes. The State then approached the Imperial Government, to give effect to this secession demand, but the British Government, after going into the matter, decided that the secession of a State was against the principle of federation, and therefore, rejected the demand. This decision has profoundly influenced the course of British federalism.

No party feelings in the beginning. When the colonies in Australia, severally, got responsible self-government, the basic principle of all the political institutions, so established in them, was the parliamentary type of government as it existed in England. The success of this system depends upon a well-organised party system. When an organised majority, necessarily in office in the legislature, has a well organised minority in opposition to reckon, there is always the certainty of a good debate and a thorough examination of legislative measures. But the early settlers in Australia had no vital differences among them. They were, 99 per cent. of them, Britishers, hence racial and linguistic or cultural differences were absent. They had their

new homes in a country which was undeveloped, and vast tracts of land lay before them, inviting them to toil, and so they had less chances of organising themselves into political parties. "The result was a period of confusion. Ministers were appointed and defeated in quick succession, and no one could count on steady support in the Assemblies."[1] In Victoria there had been eight ministries in seven years, and South Australia forty-one in forty years.

Economic factors as party issues. There was total absence of constitutional issues in the early period of responsible government in Australia due to the grant of adult suffrage. Therefore, the only differences that at first appeared and divided the politicians into two groups related to economic matters. There were the old parties of Free Traders and Protectionists, the former predominating in New South Wales and the latter in Victoria. It was only towards the close of the nineteenth century that other factors influenced the course of Australian politics. The leaders of the working class began to organise themselves, outside legislature, and put forward the usual demands like eight Hours' Day, more wages, etc. "In every colony Trade and Labour Councils, embracing and combining the efforts of a number of the existing unions, began to be formed, and their leaders began to busy themselves with politics in a way distasteful to unionists of the older type."[2] These unions continued to grow and successfully captured a few seats in the State legislatures. Their compact organisation sometimes compelled the ministers to yield to their demands now and then.

Labour Party comes into power. When the first elections to the Federal Parliament were held, the Labour Party succeeded in capturing 24 seats out of a total of 111 in the House and the Senate. The other two numerous parties were the Protectionists and the Free Traders, but as none of these commanded an absolute majority in the Parliament, the Labour Party held the key to office. Hence the administrations were short-lived in the beginning. The growing strength of labour in the successive parliaments fused the two older parties into a coalition, not because of any similarity in their programmes but because of their common hostility to socialism. But in the regular elections of 1910, the Labourites obtained a majority and came into power and office, with a working majority in the House of

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[1] Wood : *The Constitutional Development of Australia*, p. 193.

[2] *Modern Democracies*, vol. II, p. 224.

Representatives and a large majority in the Senate. "Thus ended that triangular conflict which had caused six changes of Government within the first ten years of the Commonwealth, rendering ministries unstable and breeding intrigues and cabals."[1] The two older parties then combined into one party called the National. Similar happenings in the State legislatures resulted in formation of only two parties, the Labour and the National.

Later on, the farmers organised themselves into a distinct political party of their own (the Farmers), getting some members from the Labour Party. The National Party, too, adopted another name, *viz.*, the United Australia Party, with anti-socialistic programme. These are now the three political parties in Australia. The Labour Party, though now and then not faring well at elections, is by far the best organised party in the Commonwealth and, therefore, deserves greater notice. It has, in each constituency throughout the Commonwealth, a Trade Union Council and a Political Labour League. Each member has to sign its constitution which requires strict party discipline. Just before the approach of elections of the State Legislature, delegates from these Councils and Leagues of all the constituencies meet and discuss the election programme and manifesto. When that is adopted by a majority, all members have to support it. Candidates to the legislature have to sign a pledge to obey the mandate of the party caucus in the next legislature, and also to sign blank forms of resignation from the legislature to be kept with the party caucus for future occasions.

Similarly, when elections to the Commonwealth Parliament are about to be held, six delegates from the central organisation of the party in each State, meet in a conference to prepare the programme and manifesto for federal elections. The candidates who are adopted sign pledges and resignation forms as in State elections.

After the elections are over, inside the legislature, whether State or Federal, all members of the Labour Party vote and act as one compact group with strictly enforced party discipline. They meet in a caucus, behind closed doors, at least once a week to decide their attitude towards the various measures before the legislature. Even when the Labour Party is in office, such meetings are held, the caucus, and not the cabinet, determining the policy to be pursued. Even for the formation of the cabinet, the caucus elects the ministers and the Prime Minister is not allowed to choose his colleagues. Each minister is res-

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[1] *Ibid.* p. 226.

ponsible to the caucus for the administration of his department. And when the party has a large majority in the legislature, its rigid discipline and organisation render the opposition an "important" body. Though this method is weakening the spirit of the parliamentary system of government, it undoubtedly gives strength and a greater lease of life to the administration.

The United Australia Party has also adopted a simlar organisation in the States and the Commonwealth. But the Labour Party has greater control over votes, due to the popularity of its programme in the conditions prevailing in that continent.

The party programmes are such that State particularism is receding before them, and the Houses as well as the Senate are now divided not on issues relating to particular States but on broader issues common to the whole federation. This is profoundly influencing the course of federalism in Australia, strengthing the central government as against the separatist tendencies of the States. And most of this tendency is the direct result of the compact Labour Party whose programme aims at a closer unification of Australia.

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THE UNION OF SOUTH AFRICA

This union of Colonies marks, as I believe, a great advance in the fusion of the races which inhabit South Africa. The inhabitants of South Africa are some of British, some of Dutch and some of French Huguenot descent. Their ancestors through many years of history suffered and fought for freedom. They underwent forfeiture and exile and imprisonment, and on the scaffold and on many battlefields they bore witness in the cause of civil and religious liberty.

—THE EARL OF CREWE

History of the Constitution

Of the self-governing dominions of the British Empire, the Union of South Africa was the last to be formed as a united self-governing unit.

Till 1900. Its area is now 472,494 square miles, and population 12,667,759 of whom 2,641,689 are Europeans and the rest Asians and natives. Of the Europeans 58 per cent speak Afrikans, a variant of Dutch, and the rest speak English. The Dutch were the earliest European colonisers of South Africa, who originally founded the Cape Colony. In 1814, Holland ceded it to the British Sovereign. Later, an influx of British settlers increased the British element in the Cape Colony which soon became industrialised. The Dutch colonists, not satisfied with their fate in the Cape Colony, went further north and founded another Boer republic, named the Orange River Colony, which was annexed by the British in 1900. The discovery of gold and silver mines in the interior gave a new impetus to a further move northward and they established a third Boer republic, the Transvaal, which was also annexed by the British in 1900. When the Boer War broke out in South Africa, the Dutch were defeated, and in the end these colonies were ceded to England. Thus England became master of South Africa.

Four Independent Colonies. All the four colonies continued to have their separate administrations, unconnected with each other, and governed under the directions of the Colonial Office in London. Apart from the differences in their historical growth, the four colonies had several other conflicting interests which were "leading them farther and farther". Firstly, their economic life was not similar; the Transvaal was leading in trade which it carried through Delagoa Bay; Natal conducted its trade through Durban, and Cape Colony through Cape Town. The railway systems of the various colonies quickly started a "rate war" which threatened to precipitate a serious conflict. Secondly, there were fundamental differences in their tariff policies. The Transvaal desired free trade, whereas Natal and Cape Colony favoured protection not only for revenue purposes but also for creating industrial centres at the sea ports. Thirdly, the colonies had considerable discrepancies, in their respective treatment of the Native population. As the proportion of the white population to the number of the natives was 1 to 4, there was a serious apprehension of the divergent native policies of the four colonies resulting in a grave danger to the whole of the country.

Move for Union. "Out of the very circumstances that seemed to be driving the four colonies asunder was born the recognition of the need for union." All plans for a customs union having failed to achieve the desired effect, the Cape House of Assembly, alive to the dangers of a continued disunion, adopted in June 1871, a resolution appointing a Commission to draw up a plan of dividing the whole of British South Africa into a number of provinces and then setting up over them a central Federal Government. When the federal movement received an appreciable amount of support, the British Parliament passed a Permissive Act (the South African Confederation Act, 1877). Explaining the objects of the legislation, the Earl of Carnarvon, while introducing the Bill said: "The Bill before your Lordships is one of outline and principle. It is one containing the framework of a future confederation, but leaving the details to be filled up after free communications between the Imperial and Local Governments. It is essentially permissible—one by which no sort of pressure would be put on the Colonies, while it will at the same time give them every opportunity of confederating, if they should think it advisable to do so". It was provided that if the Colonies did not confederate along the lines of the Act within five years after its passage, the Act would automatically lapse. And as the Colonies failed to unite within the prescribed

time, the Act lapsed in 1882.

Inter-Colonial Conference, 1903. In 1884, the Afrikander National Party was formed with the object of uniting all the European Nationals into one Union Government. "Increasing conflicts between the Dutch and English Colonists, however, made such a union impossible." But the economic problems became so important that in 1903 a Customs Union Conference of the colonies was held. It resolved in favour of establishing a Customs Union, appointed a committee to discuss the Railway Rates question, and tried to reach an agreement on the native question. Thereupon, the British Government issued an Order-in-Council, creating an Inter-Colonial Council in South Africa (20th May, 1903), to deal with the railway and other fiscal questions common to the four colonies. Three years later, in 1906, a Customs Convention met and resolved to establish a Customs Union. But all these efforts, since 1871, for any kind of union had proceeded from the Colonial Governments or the Governors, without any reference to the people themselves, and had, consequently, failed. In June 1907, the Earl of Selborne, High Commissioner in South Africa, addressed a letter to the Cape Governor, expressing his conviction that if the cause of union was ever to bear fruitful results, the initiative must come from the people. Laying considerable stress on the necessity of union he wrote: "This union of a divided country is seldom a thing which can be postponed to a more convenient season. Divisions left alone tend to emphasise and perpetuate themselves day by day until really firm union becomes impossible."

Inter-Colonial Conference, 1908. In May 1908, the Inter-Colonial Conference met again to discuss the railway rates and tariff questions, but like the Annapolis Conference in the U. S. A., resolved that "in the opinion of this conference, the best interests and the permanent prosperity of South Africa can only be secured by an early union under the Crown of Britain, of the several self-governing Colonies." It further resolved that a convention of the delegates of the colonies be convened to prepare a draft constitution.

The Constituent Convention. Accepting these recommendations of the Conference, the legislatures of the four colonies, as also that of Rhodesia,[1] appointed delegates. Thus, thirty-three delegates met in a convention on 12th October 1908, at Durban. As most of the delegates were those who had fought in the opposing camps in the Boer War,

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[1] Ultimately, Rhodesia did not join the Union.

and as the matters they had to discuss included those of acute controversies, they decided to hold their meetings in secret. The discussions began at Durban; then the Convention moved to Cape Town. It had a very difficult task before itself, the racial differences, the economic controversies, and the differing systems of laws, all of them too stupendous to be surmounted before an agreement could be reached regarding the terms of a union. Ultimately, a Draft Constitution was prepared and submitted to the colonial Parliaments. The Transvaal Parliament adopted it without any amendments. Orange River Colony suggested certain amendments, which were not of a very complicated nature. In Cape Colony more serious amendments were made dealing with equal rights and the abolition of proportional representation. Natal created a great difficulty by suggesting amendments which virtually amounted to obstructing the work of the Convention.

The Convention met again at Bloemfontein to consider all those amendments. Certain changes were made in the Draft which was finally accepted and signed by all the delegates on 11th May, 1909. This changed Draft was again submitted to the colonial Parliaments. The Transvaal Orange River Colony and Cape Colony adopted it, but, Natal, suspicious of the union, decided to refer it to the people. Despite great apprehension regarding the result of their referendum, the people of Natal voted by an overwhelming majority in favour of the union.

Thus the most difficult part of the Convention came to a successful end. Delegates from the colonies then went over to England to get the Draft accepted by the Imperial Parliament which adopted it and passed the Union South Africa Act, on 20th September, 1909. On 31st May, 1910 the four Colonies were formally united under one Government, *viz.*, the Union of South Africa, which solved their problem permanently.

The Union Parliament has made sixteen amendments to the Constitution of 1909. These amendments, some of mere verbal nature while others effecting important changes, were made on 25th April, 1911; 29th May, 1920; 15th May, 1925; 27th July, 1925; 5th February, 1926; 7th June, 1926; 8th June, 1926; 26th March, 1927; 1st June, 1933; 2nd June, 1934; 22nd June, 1934; 29th March, 1935; 7th May, 1935; 10th May, 1935; 16th April, 1936; and 21st April, 1937. The amendment of 1934 was contained in the *Status of the Union Act* which accepted the constitutional changes made by the *Statute of Westminster*. Section 2 of the Act declared: "The Parliament of the Union shall be

the sovereign legislative power in and over the Union, and notwithstanding anything in any other law contained no Act of the Parliament of the United Kingdom and Northern Ireland passed after the 11th day of December 1941 shall extend, to the Union as part of the law of the Union unless extended thereto by an Act of the Parliament of the Union."

THE CONSTITUTION OF 1909

Features of the Constitution. "The most striking characteristic, perhaps, of the Constitution is its trust in the future."[1] Thus speaks Mr. Brand who was secretary to the Transvaal delegation to the National Convention. And this is true. Till the union was effected, the Dutch and the English, the two partners, had been extremely suspicious of each other and of the new Government. Yet they made several compromises to meet each other's view-point relying upon a better future. In the circumstances then prevailing, none could have predicted the establishment of such a close union.

Unitary features. The delegates to the convention really did a wonderful work in framing a constitution which though bearing several federal features, is essentially unitary in spirit. It gives more power to the central government and relegates the provinces to the status of merely administrative units depending upon the centre for their legislative, executive and judicial functions. Provincial Governments in the Union exercise mostly delegated authority and their legislative measures are merely *ordinances* and not *laws*. The heads of provincial executives are called *Administrators* and not Governors or Lieutenant-Governors. The Union Government may delegate any power to be exercised by the provincial government. In the Preamble, there is no reference to the wishes of the people of the Union though the Draft Constitution was prepared by the delegates of the colonial governments and in one colony at least, *viz.*, Natal, the Draft was referred to the people for their approval. As the Preamble states that "the several British Colonies therein should be united under one Government in a legislative union under the Crown of Great Britain and Ireland," the Union is generally unitary in spirit.

Federal features. There are, however, certain features in the constitution which give it a federal appearance. In the Preamble itself

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[1] *Union of South Africa*, p. 114.

there is mention of making "provision for the establishment of provinces with powers of legislation and administration in local matters and in such other matters as may be specially reserved for provincial legislation and administration," thus the Central Government does not possess unfettered powers. Dutch and English have both been recognised as official languages in which all official records are printed. In Canada, too, French and English had to be recognised as official languages to satisfy both the French and the English settlers. Australia, on the other hand, had no racial or linguistic problem to solve. In the Union, the central legislature is composed on provincial basis, the Senate as well as the House of Assembly, and this is essentially a federal feature of the constitution. Moreover, there is a compromise on the question of locating the Capital of the Union. Cape Town has been fixed as the seat of the Legislature, Pretoria that of the Executive Government, and Bloemfontein that of the Supreme Court, as a recognition of the prestige of the provinces—a system which is very costly and at the same time inefficient.[1] All matters relating to native policy, education and franchise have been exclusively reserved to the provinces. The territories of the provinces (of the Union) are the same as those of the colonies before the Union. In the Senate, all provinces have been given equal representation, though there is also provision for the nomination of eight senators by the Central Government. All these features, which essentially formed the basis of compromise (a matter in which the Afrikanders are past-masters), impart to the constitution a federal appearance.

Contrary to the Commonwealth example, in the South African constitution the portion dealing with the Executive precedes that dealing with the Parliament. This is probably due to the tendency of the Dutch to give their confidence to the Government of the day. There is a strong feeling among them that it is disloyal to criticise the Government.[2] In fact, the Executive there seems to predominate the Legislature probably due to the slow weakening of Parliaments everywhere else.

A Mixed Constitution. On the whole, the constitution is a curious admixture of unitary and federal principles, aiming as it does at a union of the two European races. And though during these years the Dutch and the English have not really blended (and how could

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[1] Keith : *The Constitutional Law of the British Dominions*, p. 363.

[2] *Union of South Africa*, p. 43.

they?) the Union of South Africa "has at least given the recording angel of past policies theme for lamentation."[1]

The Government of the Union

The Government of the Union, though a creation of independent provinces, has fullest authority over the Provincial Governments which, under the constitution, have been reduced to the position of merely local administrations. There is, therefore, practically no great limit to the powers of the Central Government, save in a few matters like franchise and lower education.

The Union Legislature. The legislative power of the Union is vested in a Parliament consisting of the King, a Senate, and a House of Assembly. The Parliament possesses "full powers to make laws for the peace, order, and good government of the Union."[2] In the U. S. A., Canada and Australia, on the other hand, the central legislature has defined powers, and in certain cases residuary and concurrent powers as well.

Senate. The Senate is the upper house of the Union Parliament and contains 48 members. It is composed on a peculiar basis. Though each of the original four provinces has been given equal representation, *viz.*, eight senators, the Governor-General also nominates four senators, who hold their seats for ten years. Since 1949 South-West Africa (formerly a mandated territory under the Union) has been merged in the Union and is represented by 4 Senators in the Senate. Thus the total strength of the Senate is forty. One half of the nominees of the Governor-General are selected "on the ground mainly of their thorough acquaintance, by reason of their official experience or otherwise, with the reasonable wants and wishes of the coloured races in South Africa," (Section 24 (ii) of the Act). This was considered necessary because the coloured races, composing four-fifths of the total population of the Union, are debarred from having direct representation in the Parliament, hence self-government in South Africa means government merely by the white settlers.

Election of Senators. Regarding the election of the eight senators from each province, a novel procedure, unknown to other constitutions, was followed for the constitution of the first Senate (1910). The

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[1] Egerton, *Federations and Unions in the British Empire*, p. 89.

[2] Section 59 of the South Africa Act, 1909.

two houses of the provincial legislature, sitting together in one body elected the eight senators for the province. These were elected to hold office for ten years, and any vacancy in the interval was to be filled by the provincial council (which was elected after the formation of the Union) for the residue of the term. Section 25 of the Act provided for the composition of the subsequent Senates thus: eight senators to be nominated by the Governor-General as aforesaid; the eight senators from each province to be elected by the members of the provincial council of the province together with the members of the House of Assembly elected for that province. So that, at present, the eight senators of each province are elected neither directly by the people, nor only by the provincial council, but by an electoral college composed of the members of the provincial council and the members of the Union Assembly elected for that province. Thus, the Union Senate is really more federal in character than the Senate of any other federation. The Representation of Natives Act, 1936, provides for the election of four additional senators, each of whom will represent one of the four electoral areas into which the Union is divided. These senators hold their seats for five years. They must possess the same qualifications and enjoy the same privileges as other senators.

Qualifications of Senators. A Senator must be at least thirty years of age, a qualified registered voter for election of members of the House of Assembly in one of the provinces, a resident of at least five years standing within the Union, a British subject of European descent, and an owner of immovable property within the Union valued at 'not less thanfive hundred pounds over and above any special mortgages thereon.' In its composition, therefore, the Union Senate is more undemocratic than the Commonwealth or the U. S. A. Senate.

Working of the Senate. The term of the Senate is ten years. It chooses one of its own members to be its President. At least twelve Senators form the necessary quorum to constitute a meeting of the Senate for exercising its powers. All questions are decided by a majority vote, the President having the right to exercise only a casting vote in case of equality of votes, but not otherwise.

House of Assembly. The House of Assembly is the lower house of the Parliament and is at present composed of 159 members distributed among the provinces on population basis, in accordance with the recommendation of the Ninth Delimitation Commission appointed in connection with the 1951 census. These are elected by single member electoral districts in the provinces, and are distributed since 1951

thus: the Cape of Good Hope 54, Natal 15, the Transvaal 68, Orange Free State 13, South-West Africa 6, and Native representatives 3. Members are elected for a five year term.

In the original composition of the first House of Assembly (1910) each province had been assigned an arbitrary representation, the Cape and the Transvaal getting a smaller representation (compared with their white population) in order to give Natal and the Orange Free State a larger representation.[1] The Constitution recognised the separate identity of the provinces (undoubtedly a federal feature by providing that the representation of no province would be reduced until the expiration of ten years after the commencement of the Union or until the strength of the House (originally 111 in the year 1910) reached 120, whichever period was the longer. It is provided that after every five years a census of the European population will be taken and on the basis of the latest available figures the strength of the House varied in accordance with the following provisions:

(*i*) First of all the quota of the Union is determined by dividing the total number of the male European adults, as ascertained in the census of 1904 (this number was 349,837), by the total number of members of the first House, *viz.*, 111. Thus the quota for the Union is 3,151 for each member.

(*ii*) After every five years, census of the European male adults will be taken and if there is an increase in any province over the previous census figures, each increase of 3,151 will add one member to the representation of the province, but "no such addition will be granted to any province until the total number of European male adults in such province exceeds the quota of the Union multiplied by the number of members allotted to such province for the time being, and thereupon additional members shall be allotted to such province in respect of only such excess." This had been provided, because in 1910 the original representation given to each province did not follow the quota rule strictly, two provinces getting a smaller share and the other two a larger one.

Franchise, and qualifications of members. The present qualifications for voters to the Assembly have been fixed in Acts Nos. 38 of 1930, and 41 of 1931 which have respectively extended the franchise to all adult (over 21 years of age) European females and removed the

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[1] Cape of Good Hope was assigned 51 members, Natal 17, Transvaal 36 and Orange Free State 17.

property qualifications existing in the Cape and Natal provinces. There is thus adult franchise for the white population. Members to the Assembly are elected in single member electoral divisions in each province. These electoral divisions are re-arranged after each quinquennial census by a Delimitation Commission appointed by the Governor-General and consisting of three judges of the Supreme Court. In dividing each province into electoral divisions the Commission gives due consideration to community or diversity of interests, means of communication, physical features, existing electoral boundaries, and sparsity or density of population. The quota of voters is taken as the basis of this division, but "the Commissioners, may, whenever they deem it necessary, depart therefrom, but in no case to any greater extent than fifteen per centum more or 15 per centum less than the quota." After the Commission has submitted its proposals in detail, the Governor-General proclaims them as final decisions.

Every member of the House of Assembly must be a qualified voter for the Assembly, a resident of not less than five years within the Union, and a British subject of European descent.

Organisation of the Assembly. The normal life of the Assembly is five years, but it may be dissolved earlier by the Governor-General. The Assembly chooses one of its members to be its Speaker. At least thirty members constitute a quorum. All questions in the Assembly are decided by a majority of votes, the Speaker having the right to vote only in case of equality of votes, but not otherwise.

Every member of the Senate or Assembly has to subscribe to the prescribed oath of allegiance before taking his seat as a member. No person can be a member of both the Senate and the Assembly at one and the same time. But a minister who is a member of any one house may also speak in the other without, however, voting in that other house. A person ceases to be a member of the legislature on being convicted for any crime or offence for which he is sentenced to at least a year's imprisonment without the option to pay fine or on being declared an insolvent or an insane, or on holding under the Crown an office of profit. But Ministers of State, Government pensioners and retired Naval and Military Officers are exempted from this disqualification. Every member of the Senate or Assembly gets an annual allowance, and enjoys all the usual privileges and immunities during the period of his membership.

Parliament decides its own rules. Every house of the Parliament makes its own rules of procedure and conduct of business. Both

houses enjoy co-equal legislative powers, but money bills must originate in the Assembly. When a Bill has passed through both houses, it must receive the Governor-General's assent before it becomes a law. The Governor-General has the right to recommend amendments to any legislative measure passed by the Parliament. He may also reserve any measure for the King's pleasure which must be expressed within a year.

Relations between the Houses. If the House of Assembly passes a Bill and the Senate refuses to pass it or passes it with amendment to which the Assembly does not agree, it is referred back to the Assembly. If in the same session the Assembly again passes the measure in a form not acceptable to the Senate the Governor-General may convene a joint session, of the two houses. At this joint session, the members deliberate and vote on the measure as last proposed by the Assembly and on such amendments as are passed by one house but not agreed to by the other. If a majority of the total number of members of both houses vote for any amendment it is declared to have been duly passed by both Houses of Parliament. And if the Bill with amendments, if any, is passed by a majority of the members present, it is considered to have been duly passed. It is then submitted to the Governor-General for assent.

This provision for solving deadlocks between the two houses is simpler than that prevalent in the Commonwealth of Australia or even that existing in Canada, and therefore, leads to quicker and better legislation. There is also a Natives Representatives Council consisting of six official members, four nominated members appointed by the Governor-General (one for each electoral area), and twelve elected native members, three for each electoral area. The functions of the Council are to consider and report upon (*a*) proposed legislation in so far as it may affect the native population ; (*b*) any matter referred to it by the minister ; (*c*) any matter specially affecting the interests of the natives in general.

The Union Executive

King as the Nominal Executive. According to section 4 (1) of the Status of the Union Act, 1934, the Executive Government of the Union in regard to any aspect of its domestic or external affairs is vested in the King, acting on the advice of his Ministers of State for the Union, and may be administered by His Majesty in person or by a

Governor-General as his representative. Sub-section (2) makes it clear that any reference to the King in the Act means a reference to *King acting on the advice of his Ministers of State for the Union.*

The Governor-General is now merely a constitutional head of the Union Government and holds, in the King's name, the command of all naval and military forces of the Union.

There is an Executive Council of Ministers to advise the Governor-General in the government of the Union. The members of the Council are chosen by the Governor-General and sworn as Executive Councillors, holding office, in theory only, during his pleasure. In making his choice of these Executive Councillors, called Ministers, the Governor-General follows the usual constitutional practice of inviting the leader of the majority party in the Parliament to accept the office of Prime Minister. This leader then selects his colleagues and submits their names to the Governor-General for formal appointment as Ministers. The Ministers form the Cabinet and hold charge of the following ministers (there also being some Minister or Ministers without portfolio): Premiership and Ministry of Foreign Affairs, Ministry of the Interior, of Public Health and of Education; Ministry of Mines and Economic Affairs; Ministry of Transport; Ministry of Defence, Ministry of Finance; Ministry of Justice; Ministry of Labour; Ministry of Agriculture and Forestry; Ministry of Lands; Ministry of Post and Telegraphs and of Public Works: and Ministry of Native Affairs.

The Cabinet is responsible, as a body, to the lower house and resigns on losing its confidence. The railways, ports and harbours are managed by a Harbour and Railway Board presided over by a Minister of State. There is a large number of civil servants, holding permanent posts, who conduct the day-to-day administration of the country. Dutch and English are both recognised as official languages.

The Union Judiciary

The Common Law of the Union is not the English Law but the Roman-Dutch Law of Holland, which is largely uncodified. But with regard to certain matters, *e. g.*, mercantile matters, patents, copyrights, companies, trade-marks, insolvency, etc., principles of English Law have been introduced by statute. The Law of England, however, is now imperceptibly influencing civil and criminal procedure and is definitely followed in shipping, insurance and other business matters.

By Art. 95 of the Constitution, a Supreme Court has been established. It consists of a Chief Justice and four Judges of Appeal. Under the Supreme Court of the Union there are provincial Supreme Courts, one division in each province, but in the Cape there are two divisions. Below each Provincial Supreme Court there are circuit and magisterial courts in the province. The judges are all appointed by the Governor-General-in-Council. They hold office during good behaviour and may be removed by the Governor-General-in-Council on an address from both Houses of the Parliament in the same session.

The Appellate Division of the Supreme Court is the highest court of appeal for the whole Union and sits at Bloemfontein, the capital of the Orange Free State. Ordinarily no appeal from the Supreme Court of South Africa or any division thereof lies to the Judicial Committee of His Majesty's Privy Council, but the King continues to exercise the Royal Prerogative to grant special leave for preferring such appeals.

The Provincial Supreme Courts, besides exercising original jurisdiction in all important provincial matters, "have jurisdiction in all matters:

(*a*) in which the Government of the Union or a person suing or being sued on behalf of such Government is a party:

(*b*) in which the validity of any provincial ordinance shall come into question."

They also exercise jurisdiction in matters affecting election to the Assembly or the Provincial Councils in the provinces concerned.

The Supreme Court of the Union frames rules for the conduct of procedure in all superior and other provincial courts; its process runs throughout the Union and its judgments and orders have full force and effect in every province. Thus within the Union, the powers of the Supreme Court are even higher than those of the Commonwealth High Court, but the former does not possess the power of interpreting the constitution and adjudging the validity of Union legislation.

The Provincial and Local Governments

The four original colonies still continue as the four provinces in the the Union, *viz.*, the Province of the Cape of Good Hope, Natal, the Transvaal, and the Orange Free State. The provinces have limited powers, legislative and executive, and are very much like administra-

tive areas subordinate to the central government. There is a provincial legislative council in each province, the members of the council being equal in number to the members in the Union Assembly elected in the province, provided further that no province shall have less than 25 members. At present the strength of these provincial councils is: the Cape of Good Hope 61, Natal 25, the Transvaal 57, and Orange Free State 25. There is adult European franchise in all provinces. Any qualified voter can seek election to the council of the province in which he resides. The life of each council is five years from the date of its meeting and it cannot be dissolved save by effluxion of time, there being no responsibility of the provincial executive to the legislature. A provincial council meets at least once a year. It elects its own chairman from amongst its members and frames its own rules of procedure, which must receive the Governor-General's assent before having effect. Members of the council receive annual allowance and enjoy freedom of speech in the council, as well as other usual prerogatives. Questions in the council are decided by a majority of votes.

Under Act. 85, the constitution of 1909 has given the provincial councils power to make ordinances in relations to the following classes of subjects :

(*i*) Direct taxation within the province in order to raise a revenue for provincial purposes:

(*ii*) The borrowing of money on the sole credit of the province with the consent of the Governor-General-in-Council and in accordance with regulations to be framed by Parliament:

(*iii*) Education, other than higher education, for a period of five years and thereafter until Parliament otherwise provides:

(*iv*) Agriculture to the extent and subject to the conditions to be defined by Parliament :

(*v*) The establishment, maintenance, and management of hospitals, and charitable institutions :

(*vi*) Municipal institutions, divisional councils, and other local institutions of similar nature :

(*vii*) Local works and undertakings within the province, other than railways and harbours and other than such works as extend beyond the borders of the province, and subject to the power of Parliament to declare any work a national work and to provide for its construction by arrangement with the provincial council or otherwise :

(*viii*) Roads, outspans, ponts, and bridges, other than bridges con-

necting two provinces:

(*ix*) Markets and pounds:

(*x*) Fish and game preservation:

(*xi*) The imposition of punishment by fine, penalty, or imprisonment for enforcing any law or any ordinance of the province made in relation to any matter coming within any of the classes of subjects enumerated in this section:

(*xii*) Generally all matters which, in the opinion of the Governor-General-in-Council, are of a merely local or private nature in the province:

(*xiii*) All other subjects in respect of which Parliament shall by any law delegate the power of making ordinances to the provincial Council.

It is interesting to observe here that in the U. S. A. and the Commonwealth of Australia, where the powers of the central government have been restricted and specifically enumerated in the constitution, the closing words of the Article (defining those powers) leave room for expansion of the powers of the central government, but in the case of the Union, some similar words have been put in the constitution to widen the powers of the Provincial Governments, vide (*xii*) and (*xiii*) above. And, therefore, in the light of the experience of the working of their respective constitutions, the central governments in the U. S. A., and Australia have acquired wider powers. The tendency in the Union has been in the opposite direction, and the provinces have acquired further powers after 1910. These extended powers of the provincial councils now include "destruction of noxious weeds and vermin, and the control of drug; the experimental cultivation of sugar, tea, and wines; grants to agricultural and kindred societies: library, museum and art gallery administration with certain exceptions; the administration of cemetery and casualty wards; poor relief; the regulation of shop hours; the establishment and administration of townships, and the Cape, the administration of labour colony legislation in its application to industrial institutions".[1] The provincial councils also deal with the licensing and control of vehicles, horse-racing, and betting and places of amusements, besides the right to levy hospital and education fees and several other licencing fees. Whenever a provincial council considers any new law necessary, the power to make which it does not possess, it can request the Union Parliament to enact

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[1] Keith, *Constitution, Administration and Laws of the Empire*, p. 232.

that law.

There is an important constitutional aspect in which the provincial councils in the Union occupy a position of greater subordination and inferiority to the central government than the state legislatures in Australia or the U. S. A., and the provincial legislatures in Canada. Every enactment of a provincial legislature in the Union is called an ordinance and not a law, and even this ordinance has no effect or force until it has been assented to by the Governor-General-in-Council, and an ordinance lapses if not assented to within a year of its passage through the Council. "The assent is not by any means a formality, and is of special importance as it can be, and has been, used to secure the observance of the rule that the control and administration of native affairs and of matters specially or differentially affecting Asiatics throughout the Union is vested in the Governor-General-in-Council. Any ordinance is valid only in so far as it does not disagree with an Act of Parliament, and may at any time be superseded by such an Act".[1] The provinces raise their own revenues from the resources granted them and also receive subsidies from Union Funds, as provided for in the Financial Relations Act, 1913. But in each province these subsidies form the greater part of the provincial revenues.

In no other matter do the provinces in the Union differ so much from states and provinces in other federations as in the executive branch of the provincial government. In the Union, each province has an Administrator, appointed by the Governor-General-in-Council for a term of five years (residents within the province being given preference for appointment), who is the head of the provincial executive. There is an executive committee in each province, consisting of four members elected by the provincial council from amongst its own members or otherwise, and the Administrator who is the chairman of the committee. The remuneration of the executive councillors is determined by the provincial council with the approval of the Governor-General-in-Council. Executive Councillors and the Administrator have the right to take part in the proceedings of the council and those of them who are elected members of the council exercise the right of voting as well.

The Administrator presides over the meetings of the Executive Committee. All questions in the Committee are decided by a majority of votes including that of the Administrator who, in case of equality of

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[1] *Ibid.* p. 233.

votes, has also a second, *i. e.*, casting vote. The Executive Committee supervises the appointment, tenure of office and retirement, etc., of all public officers in the province. "In regard to all matters in respect of which no powers are reserved or delegated to the provincial council, the Administrator shall act on behalf of the Governor-General-in-Council when required to do so, in such matters the Administrator may act without reference to the other members of the executive committee".[1] In all other matters the Committee has full powers of control, but not being necessarily composed of persons belonging to the same party; there is no cabinet responsibility to the legislature. In this respect, there is much resemblance in the relations between the legislature and the executive in the Union provinces, and those in the Swiss cantons.

The provinces in the Union have almost no powers over the judiciary save over magisterial and other minor courts. All judicial power belongs to the Union Government.

Each province has municipalities and local boards to carry on administration of local interests. There are 139 such municipalities in the Cape, and 64 in the Orange Free State. Each municipality has a Mayor and a number of elected members.

Amendment of the Constitution

The framers of the Union Constitution preferred the Commonwealth method of alteration of the Constitution (with certain changes), to the Canadian method. Art. 152 of the Constitution empowers the Union Parliament to repeal or alter any of the provisions of the Constitutional Act, subject to the following two conditions:

(1) The Parliament cannot repeal or alter any provision "for the operation of which a definite period of time is prescribed". Such provisions relate to the formation of the first Senate and Assembly, and are now no longer of any effect as more than the prescribed time has elapsed since the passing of the Act.

(2) The Parliament cannot repeal or alter the proportion of provincial representation in the Assembly until its membership has reached 150 or ten years have elapsed since the formation of the Union; whichever is the longer period, and as the number has reached 150 this restriction is now no longer valid. It cannot alter qualifications

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[1] Art. 14 of the Constitution.

for electors to the Assembly in the Cape and other provinces, nor can it enact against a recognition of both Dutch and English as official languages, unless the Bill embodying any of these alterations has been passed by both Houses of Parliament sitting together, and at the third reading agreed to by at least two-thirds of the total number of members of Parliament. The Union Parliament having declared itself a sovereign legislature can amend the constitution as provided for in the Statute of Westminster.

During the last forty years the Union Parliament has made several amendments in the Constitution, all of them of a minor character, dealing with franchise or delegation of more powers to the provincial administrations. Of the three Dominions, Canada, Australia, and South Africa, the last one has adopted the easiest method of altering the Constitution, and this just in keeping with the unitary spirit of the constitution.

Political Parties

South Africa presented the greatest difficulties to the British Government in the matter of keeping the colonies within the Empire. The Boer War of 1899-1900, terminated by the Treaty of Vereeniging, (31st May, 1902), was the culmination of the struggle. Happily the Boers headed by Generals Smuts, Botha, Hertzog and de Wet, kept their word and worked the provisions of the Treaty as honourable men. They, however, organised a political party *Het Volk* (the people) to get self-government for the Transvaal and the Orange River Colony. When the four colonies became united by the Act of 1909, Lord Gladstone (son of the greatest Liberal statesman, Mr. Gladstone, of England) was appointed the first Governor-General of the Union. On his arrival in Cape Town, Lord Gladstone sounded the leaders of public opinion in South Africa with regard to the formation of the first Union Cabinet, and on 21st May, 1910, invited General Botha, then Prime Minister of the Transvaal, to form the Cabinet. It was at that time that Botha differed from some of the other leaders, chief among them his friend Jameson, with regard to the general policy to be pursued. Botha insisted on including in his Cabinet the important ministers of the four provincial cabinets then in existence, so as to work the Constitution which was "the child of sincere co-operation between representatives of both sections of the people," *viz.*, the Dutch and the English, and which required the continuance of the same "sincere co-operation"

if the birth of the new South Africa was to be the happiest event in that continent. On the contrary, there were those who agreed with Dr. Jameson to take the "best men," which meant even risking the co-operation of some provinces, mostly pro-British.

Finally, Botha made his choice and included in his Cabinet four ministers from the Cape, two from the Free State including General Hertzog who took the ministry of Justice, one from Natal, and three from the Transvaal. Of the last, General Smuts (Botha's fast friend and indispensable lieutenant), became minister of the Interior, Mines, and Defence, and Botha became the first Prime Minister of the Union. In the middle of June, 1910, Botha issued a manifesto forming the "South Africa Party" with which was incorporated the *Het Volk*. The chief object of the new party was to work for the good of the whole Union by (*i*) enlisting the co-operation of the Dutch and the English, (*ii*) reconciliation of all people, and (*iii*) trying to get for the Union an honourable position within the Empire. For two years, the cabinet worked well, backed by a majority in the Assembly. Though Mr. Merriman, the Premier of the Cape (1910), had been offered by Botha a seat in the Cabinet, he declined the offer and became leader of the opposition. Thus the Union Parliament started working on party lines.

It was well known to people in South Africa that Hertzog, by his educational policy in the Free State, had alienated the English. But the dominating influence of Botha checked Hertzog, in the early months of the Cabinet, to give expression to his too pro-Dutch and anti-British views. This did not continue for long and in his public utterances Hertzog declared that he placed the interests of the Union above those of the Empire. Such a pronouncement, made without the consultation of the cabinet, struck at the root of Cabinet solidarity, and in spite of Botha's repeated attempts to explain away Hertzog's views, the Government faced a crisis. Hertzog would not resign; consequently Botha submitted his own resignation and the first Cabinet's life ended in December 1912. Lord Gladstone again invited Botha to form a new Cabinet, and this time the General reappointed all his former colleagues save Hertzog. This breach between Botha and Hertzog brought to the fore 'fundamental and irreconcilable divergence of political' ideals between them and their followers. The Botha group (the South Africa Party) worked for "partnership in a commonwealth of free British States as an essential condition for the Union's future," whereas the Hertzogites "looked for salvation to a

sovereign State, with a *republican regime*, outside that commonwealth." Immediately after his "expulsion" from the cabinet, Hertzog organised a new party, called the Nationalists, whose chief objects were to strengthen the Dutch and work for independence of South Africa in national and international matters. Botha's action and general policy were endorsed by the Congress of the South Africa Party, (which met on 20th November, 1913, at Cape Town) by a majority of 131 votes to 90.

Soon after the outbreak of the War in Europe (1914), Botha made ready to invade German South West Africa and occupy it for the Empire. On August 26, 1914, the first Congress of National (Hertzog) Party met at Pretoria and unanimously condemned the contemplated expedition. "While the Nationalists were loudly protesting against participation in the War, the occupation of German territory—secrecy concerning which could not be long maintained—was as energetically urged in other quarters of the Union as indispensable." When the war in Europe ended and statesmen met at Versailles to sign the Peace Treaty, Botha represented South Africa as its Premier. The Hertzogites had spared no pains to mobilise their party resources to oppose the South Africa Party. Only a fortnight after his return from Europe, Botha died, and was succeeded in the Premiership by his trusted lieutenant General J. C. Smuts. Though somewhat dwindled in numbers, the South Africa Party managed to form the majority in the Assembly with the help of the Unionists till 1924. The elections of that year resulted in the defeat of Smuts' Government and the Nationalists who returned with a majority formed the government with General Hertzog as the Prime Minister. This change in the government was followed by a movement for South Africa's secession from the Empire, and as a preliminary step to it the flag controversy was started, the Hertzogites insisting on replacement of the Union Jack by Union's own national flag. After a compromise formula had been adopted, this controversy came to an end. The Imperial Conferences from 1926 to 1930, succeeded in getting a higher status recognised for the Dominions including South Africa. And with the passing of the Statute of Westminster (1931), most of the demands of the Nationalist Party and the Union were satisfied. And though the difference between the ideals of the two parties have now almost disappeared, there is yet a danger of political cleavage, for as long as there are divisions between the South African Party and the Nationalists, "there is an ever increasing risk that they will, in order to justify

their distinctive political existence, resort either to the resuscitation of the old feuds, or to the creation of artificial new grounds of dispute on the old lines".[1] And as long as General Hertzog held the stage, there was little probability of fusion between them, because during the last fifteen years he had been Prime Minister of the Union, he magnified the differences with his political opponents led by Smuts. In fact, in the Union the question of political parties has ever since 1910 become a problem of personal equation. Within the Nationalists, republican wing still adheres to 'the ideal of a Republic.' When England declared war on Germany (3rd September, 1939), the Hertzog Government moved a resolution in the Union Assembly for neutrality of the Union, which was defeated by 80 votes against 67; Hertzog resigned, and Smuts formed his own Cabinet. The Labour Party is yet too insignificant to need notice.

It was, however, expected that after Hertzog's retirement from active politics the political parties would undergo a change and new groupings will take place on economic lines, thus furthering the ideal of national unity. At the same time the future of the Republican Party (the extreme wing of the Nationalists) being uncertain; there may arise a grave danger to the peaceful development of the Union should this extreme wing capture the Assembly.

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[1] Hofmeyr, *South Africa*, p. 230.

16

IRELAND

After a very careful consideration of all circumstances and due consideration by the Chiefs of the Staff we came to the conclusion that friendly Ireland was worth far more to us both in peace and war than paper rights under 1921 Treaty which were only exerciseable at the risk of maintaining perhaps an increasing avowed ill-will.

—NEVILLE CHAMBERLAIN

THE ISLAND of Ireland, situated in the Atlantic Ocean, to the West of England, and separated from the latter by the Irish Sea, consists of, at present, two parts, each with its own Government. These two parts are Eire (*i. e.* Irish Republic) with an area of 26,600 square miles and a population of 2,960,593 human souls, and Northern Ireland with an area of 33,51,251 statute acres and a population numbering 12,79,745. Northern Ireland is largely Protestant while Southern Ireland is predominantly Catholic.

CONSTITUTIONAL HISTORY

Four Periods of Irish Constitutional History. The constitutional history of Ireland falls into four periods, *viz.*, from the British conquest upto 1800, from 1800 to 1921, from 1921 to 1937, and since 1937. During the first period Ireland was conquered by Britain, treated as a dependency and finally united with Britain to form the United Kingdom. Since 1800 upto 1921, Ireland made supreme efforts to get Home Rule, but Irish nationalism was suppressed and ultimately a Treaty was signed between the two countries. The signing of the Treaty in 1921 marked the beginning of a semi-independent state, a position not accepted by the extreme Nationalists under De Valera. In 1937, Ireland adopted a new constitution of her own, assumed virtual independence and started her career as a sovereign state without the British Crown,

British conquest of Ireland. Henry II of England readily accepted (in 1168) the proposal of Dermot, the banished king of Leinster, to send out an expedition to Ireland on which he had already fixed his designs since 1153. On the eve of Bartholomew's Day, 1170, Strongbow (the Earl of Pembroke) arrived near Waterford, with a force, defeated the Irishmen and subdued Dublin. Henry II established his Law Courts in the newly conquered parts, though both the systems of law, English and Irish, continued side by side. This led to tragic results, a necessary consequence of *divide et impera*. The successors of Henry II could ill spare enough time for Ireland and, therefore, the prosperity of the thirteenth century was gradually replaced by the poverty of the fourteenth century. Several expeditions were sent out to subdue the Irish, and they met with varying degrees of success.

Consolidation under the Tudors. To King Henry VII, the first of the Tudors, belongs the credit for attempting to improve upon the past record in Ireland and trying by conciliatory methods to enlist the great tribal chiefs on the side of his government. During the reign of Elizabeth, English rule in Ireland was seriously threatened twice, each time by the O'Neills of Ulster. The opportunity was seized by Phillip of Spain and the Pope both of whom were awakened to the idea that Ireland might well be worked as a basis for operations against the English Queen. But with the failure of the Spanish Armada in 1588, the designs of Elizabeth's enemies failed. James I completed the Elizabethan process of introducing the English system throughout Ireland, particularly by planting English colonists. It was at this time that a strong Scottish element was introduced into Ulster which became the chief source of trouble between England and Ireland, and still presents serious constitutional difficulties.

Clash between Catholics and Protestants. When Charles I became king of England, he sent Wentworth to benefit the people of Ireland. Strafford's avowed object was to support the cause of absolute despotism in Ireland. He held that the Protestant interest was the true interest of Ireland, yet he did not hesitate to rouse the ardour of the Irish Roman Catholics against the Protestant Ulstermen. The English began to identify the cause of Charles I with that of the Irish Roman Catholics; matters had indeed reached the breaking point. The Irish revolt was backed by Spain and the Papacy. The rebellion lasted till 1649 when Cromwell, after Charles I's head had been cut off, proceeded to subdue Ireland. He landed at Dublin, subdued it and

then proceeded to Drogheda to wreak vengeance on the Irish. The property of all persons implicated in the Rebellion after the rising of October 1641, was forfeited, and by the Royal Declaration of November 30, 1660, all lands possessed by the adventurers were secured to them.

A pawn in international game. Ireland again became the scene of another international struggle between the two powerful rivals, *viz.*, Louis XIV and William III. James II had, after his flight from England, joined Louis XIV who began to espouse his cause against William III. Louis received an offer, in 1666, of the submission of Ireland if the Irish were aided in their attempt to throw off the English yoke. In 1689, therefore, Louis resolved on an expedition to Ireland, not to seat James II on his throne, but with the desire of making the wearing of the crown as uncomfortable to William III as possible. But while the siege of Derry, a small town in Northern Ireland shattered the hopes of Louis, James was meeting his first Parliament in Dublin on May 7, 1689. Soon the tide turned and the Jacobites and their supporters suffered serious reverses. The battle of Boyne decided the conflict in favour of William III, and the treaty of Limerick, 1691 terminated the revolt. Thereafter William forced Penal Laws on Ireland. Internally the gulf between the English and the Irish became further widened.

In the XVIII Century. The eighteenth century was marked by the establishment of English rule in Ireland. Gradually Irish prosperity suffered grievously. Agriculture gave place to pasturage, and agrarian grievances coupled with religious grievances made the Irish problem more complex. Meanwhile industrial wrongs too became serious. The industrial and parliamentary restrictions gave rise to an increasing restiveness. Then the War of American Independence stimulated the movement for Irish liberty. And to the Irishmen there was only one liberty, *viz.*, that of the conscience, which was being seriously attacked by the Protestants. The French Revolution also fanned the United Irish Movement. Napoleon thought of taking advantage of the new Irish revolt against England. Meanwhile Pitt was awakened to the danger of the existence of two Parliaments, at Dublin and London, and he determined to put an end to the Irish Parliament.

Union with Britain and as a part of United Kingdom. Consequently, the Act of Union with Ireland was then passed in 1800. Ireland was represented in the English House of Peers by 21 Peers

elected for life and 4 Prelates of the Church of Ireland. The Irish got 100 members in the House of Commons. Thus the Irish Parliament was abolished.

Meanwhile Pitt tried to fulfil the pledges he had given to the Irish, Protestants as well as Catholics, but George III proved too great an obstacle. At this time Ireland was fortunate in having Daniel O'Connell to guide the movement of Irish liberty. He had three objects to fulfil, *viz.*, the emancipation of Roman Catholics, the disendowment of the Established Church and the restoration of Parliament.

Fight for Home Rule. To O'Connell, it appeared that the liberation of the Irish masses lay in the re-establishment of an Irish Parliament. Consequently, in April 1840, he founded the Repeal Association with the object of getting the Union annulled. He carried on a whirlwind campaign throughout the island, but his movement received a strong opposition in Ulster where the pro-English Protestant population predominated.

The Sinn Fein Movement. About that time the Irish famine of 1846 brought extreme poverty to the Irish peasant. He was evicted from his holdings for failure to pay rent to the landlord. The Irish peasantry demanded three F's, *viz.*, Fair rent, Fixity of tenure and Freedom of sales. Their demand was vigorously opposed by the landlords. Abroad, in America, the Irish emigrants founded the Society of the Fenian[1] whose members were required to swear "allegiance to the Irish Republic, now virtually established, and to take up arms when called on to defend its independence and integrity." In 1863, a great Fenian Convention was held in Chicago, which considerably increased the American agitation in Ireland. The Government in Ireland used repressive measures to counteract the activities of the Fenian Brotherhood.

The General Election in England in 1868 resulted in the victory of Gladstone who took the earliest opportunity to press forward his measure for the disestablishment and disendowment of the Church of Ireland. His measure of 1869 proved a success. In 1870 he got the Land Act passed which eased tension between the landlords and the tenants.

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[1] This word is said to have been derived from Fiana, a legendary Irish hero. The subsequent history of the party is of great interest to all students of Irish independence movement.

In 1873, the Irish Home Rule League was established, as a result of a conference of the Home Government Association of Ireland held in 1870; the objects of the Association were declared to be:

"To obtain for our country the right and privilege of managing our own affairs by a Parliament assembled in Ireland, composed of Her Majesty the Sovereign and her successors, and the Lords and Commons of Ireland;

"To secure for that Parliament under federal arrangement, the right of legislating for and regulating all matters relating to the internal affairs of Ireland and control over Irish resources and revenues, subject to the obligation of contributing a just proportion of the Imperial expenditure;

"To leave to an Imperial Parliament the power of dealing with all questions regarding the colonies and other dependencies of the Crown, the relations of the United Empire with foreign States, and all matters appertaining to the defence and stability of the Empire at large;

"To attain such adjustment of the relations between the two countries without any interference with the prerogative of the Crown or any disturbance of the principles of the Constitution."

Thus in 1875, Charles Stewart Parnell who later came to be called the 'uncrowned King of Ireland' and who was in many respects unlike O'Connell, became the leader of the farmers. His fiery speeches in peasants' meetings intensified the activities of the Irish anarchists; and in 1881 he was arrested.

The elections of 1885 resulted in Mr. Gladstone's coming into power. He introduced the Irish Home Rule Bill following more or less the federal lines previously suggested by Butt. As some of Gladstone's own followers refused to support him, the Bill was rejected on the second reading by 343 votes to 313. General elections followed and the Unionists (consisting of the Conservatives and dissentient Liberals) came into office. They could not for long retain office and were succeeded in 1890 by the Liberals under Gladstone whose Second Home Rule Bill in 1893 shared the fate of the first. But the huge Liberal majority in the elections of 1906 brought Sir Henry Campbell Bannerman at the head of the Government.

The Liberals introduced the Home Rule Bill of 1912 which, after meeting some opposition, was placed on the statute book in 1914. This created a great split in Ireland. Ulster refused to accept it, for it opposed any kind of separation from England, while the rest of Ireland welcomed it. Thus a civil war threatened Ireland, both sides

importing large quantities of arms and ammunition from abroad. Meanwhile the Great War broke out and Ireland, forgetting for the moment its own question, rallied round the Empire, believing that Irish Home Rule would be won on the fields in Flanders rather than in Ireland.

The Government, while taking steps to suppress revolutionary movements, convened a Convention in 1917, consisting of Irishmen of all classes and creeds and of all political parties. Unfortunately, however, the very day (April 12, 1918) the chairman of the Convention put the Report into the Prime Minister's hands, the latter announced application of conscription to Ireland. Consequently, a storm broke which shattered all chances of a peaceful settlement. The Irishmen denied the right of any but their own elected legislature to enforce conscription; moreover, even in England conscription had not till then been applied.

Sinn Fein which had become the dominant factor in Irish public life since Easter week of 1916 now found none to challenge its authority over Nationalist Ireland. Meanwhile the majority of the Irish members elected to Parliament in 1918, refusing to attend at Westminster, assembled together under the name of Dail Eireann at Dublin and swore to uphold the Irish Republic. A parallel government was established; a republican loan was floated, representatives to most European capitals were sent to get recognition for the new State; Arbitration Courts were set up, and a new system of local government was introduced. The British Government took up this bold challenge of the Sinn Fein. It suppressed the Dail Eireann; it took severe measures against newspapers that advertised the new Republic; it declared unlawful the Arbitration Courts. In return, the Sinn Fein launched upon a guerilla warfare against the British Government forces. But in 1920, the Government passed a new Act repealing that of 1914, and providing for separate parliaments for the six counties of Northern Ireland and the twenty-six counties of Southern Ireland. A year later (26th June, 1921), Mr. Lloyd George invited Mr. Eamon de Valera, who had been President of the Dail Eireann since 1917, and Sir James Craig, Prime Minister of Northern Ireland, to a conference in London. The conference dragged on with increased membership, and shortly after midnight on December 6, a Treaty between Geat Britain and Ireland was signed.

From the Treaty of 1921. The treaty of 1921 was of the most revolutionary character, inasmuch as it granted all the demands of

the Irish Nationalists except complete separation from the Empire and the forcible inclusion of Northern Ireland in the Irish State. By the first article Ireland was given "the same Constitutional status in the Community of Nations known as the British Empire, as the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand and the Union of South Africa. . . . styled and known as the Irish Free State".[1] Ulster was recognised as forming *prima facie* a portion of the Free State, but if within a month of the ratification of the Treaty by Parliament, the two Houses of the Parliament of Northern Ireland presented an address to His Majesty, the powers of the Parliament and Government of the Free State would not extend to the northern countries. And finally the Treaty provided for the creation of a Provisional Government for the Irish Free State, pending the making by it of a formal constitution. To the Provisional Government were transferred all powers and machinery necessary for the due discharge of its duties.

De Valera opposed the Treaty. On the other hand, William T. Cosgrave, who was elected President of the Council of Ministers, led the party in favour of the Treaty. The newly constituted Provisional Government determined to restore order and continue the work under the Treaty. The new elections to the Dail resulted in 92 supporters of the Treaty (including 58 followers of Cosgrave) being returned as against 36 opponents. The most noteworthy event of that period was the enacting of a Constitution (October 25, 1922) by the Provisional Government, which was accepted by the British Parliament on December 5. It was put into effect on December 6, by a Royal Proclamation.

The Constitution of 1922. The Irish Constitution of 1922 presented many novel features. While it resembled older models in certain respects, it contained several divergences of considerable interest to any serious student of government. It declared the Irish Free State (Saorstat Eireann) to be a "coequal member" of the Community of Nations forming the "British Commonwealth of Nations." It recognised the sovereignty of the Irish people in Article 2 which stated: "All powers of government and all authority legislative, executive, and judicial in Ireland, are derived from the people of Ireland. . . ." Irish language was recognised as the official language of the Free State, though English was to have equal status (Art. 4).

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[1] The terms *Dominion* and *Colony* were skilfully avoided.

Articles 6-10 enunciated the rights of citizens—liberty of the person, inviolability of the dwelling of each citizen, freedom of conscience and the free profession and practice of religion, free expression of opinion, and the right to free elementary education.

The legislature. The legislative power was vested in a bicameral parliament called the Oireachtas consisting of Dail Eireann (lower house) and Seanad Eireann (upper house) whose members were granted all the usual privileges and rights enjoyed by legislators in democratic countries. Each house controlled its procedure.

The Oireachtas was forbidden to make *ex-post-facto* law.

Its consent was necessary to active participation by the Irish Free State in any war save in case of actual invasion.

With regard to constitutional amendments, Article 50 provided:

Amendments of this constitution within the terms of the Scheduled Treaty may be made by the Oireachtas, but no such amendment, passed by both Houses of the Oireachtas, after the expiration of a period of eight years from the date of the coming into operation of this Constitution, shall become law, unless the same shall, after it has been passed or deemed to have been passed by the said two Houses of the Oireachtas, have been submitted to Referendum of the people, and unless a majority of the voters on the register shall have recorded their votes on such Referendum, and either the votes of a majority of the voters on the register or two-third of the votes recorded, shall have been cast in favour of such amendment. Any such amendment may be made within the said period of eight years by way of ordinary legislation and as such is subject to the provisions of Article 47 hereof.

The Constitution provided that the Oireachtas might make provisions "for the Initiation by the people of proposals for laws or constitutional amendments."

The Constitution vested in the people of the Irish Free State large powers of controlling legislation, ordinary as well as that seeking to amend the constitution, and thus conferred on them greater freedom than was enjoyed by the British subjects under the British constitution.

The Executive. The most novel feature of the Irish Constitution of 1922 was the form of the Executive Authority of the Irish Free State. Article 51 vested this authority in the King to be exercised in accordance with law, practice and constitutional usage of the Dominion of Canada. It provided: "There shall be a Council to aid and advise

in the government of the Irish Free State (Saorstat Eireann) to be styled the Executive Council. The executive Council shall be responsible to the Dail Eireann, and shall consist of not more than seven nor less than five Ministers appointed by the Representative of the Crown on the nomination of the President of the Council." The President of the Council was to be in position and authority, though not in the matter of appointment, like the Prime Minister of any self-governing dominion.

The Ministers of the Executive Council all belonged to the Dail Eireann. Hence, the fusion of the legislative and executive functions made by this specific condition brought the Irish Constitution into the category of Cabinet, rather than Presidential, system. The Executive Council was made 'collectively responsible for all matters, concerning the Departments of State administered by members of the Executive Council.' It prepared estimates of receipt and expenditure of the Free State, every year, for submission to the Dail. It met and acted collectively.

Articles 55 and 56 introduced an extremely important, and at once an entirely new, element in the Executive Council. This was the nomination, by the Dail, of Ministers from outside the Legislature. A Committee of the Dail, constituted in such a way as to be impartially representative of the Dail Eireann, recommended the names of such ministers who were finally nominated or rejected by the Dail. The total number of Ministers including the Ministers of the Executive Council, was not to exceed twelve. Thus the Ministry consisted of not more than twelve persons of whom the Ministers of the Executive Council (the real Cabinet) were not to exceed seven.

Those Ministers who were not members of the Executive Council differed from the Executive Councillors in certain respects, *viz.*, (1) every former Minister was individually responsible to the Dail for the administration of the Department of which he was made the responsible head, and (2) his term was the same as that of the Dail Eireann existing at the time of his appointment, but he continued in office till his successor was appointed and he could not be removed from office otherwise than by the Dail Eireann itself, and only for stated reasons. Every Minister, whether a member of the Dail or not, could attend and be heard in the Seanad Eireann.

The Head of the State. The Representative of the Crown was styled the Governor-General of the Irish Free State and was appointed in like manner as the Governor-General of Canada in accordance

with the usual practice observed in making such appointments. His salary was to be the same as that of the Governor-General of the Commonwealth of Australia, to be paid out of the public funds of the Free State. It is clear, therefore, that the Governor-General of Irish Free State occupied the position of a mere constitutional head of the state while the real executive power was exercised by the Executive Council responsible to the Dail.

The Judiciary. The constitution set up a judiciary more independent than that of other self-governing dominions, with the possible exception of the High Court of the Commonwealth of Australia. Arts. 64—72 dealt with the constitution of the public Courts (consisting of the Courts of First Instance and a Court of Final Appeal to be called the Supreme Court) to be established by the Oireachtas. The Courts of First Instance included also a High Court, "invested with the full original jurisdiction in and power to determine all matters and questions whether of law or of fact, civil or criminal, and also Courts of local and limited jurisdictions with a right of appeal as determined by law." (Art. 64). The High Court exercised original jurisdiction in all cases in which the validity of any law under the Constitution was involved. The Supreme Court was given appellate jurisdiction in all cases (except those prescribed by law), including questions relating to the validity of any law, from the decisions of the High Court.

Neither the Treaty nor the Constitution found favour with Fianna Fail (the new name of the Sinn Fein party) now led by Mr. De Valera. On the other hand, Mr. Cosgrave's pro-Treaty party was determined to respect the Treaty and work the Constitution.

New elections to the Dail were held in 1922. The pro-Treaty party of Cosgrave returned 63 members and the Fianna Fail 44, thus leaving the real balance of power in the hands of the Farmers, Labourites and Independents; all of whom got the remaining 46 seats.

For some time the tenacious De Valera whose supporters—the Republican Deputies—refused to take the oath of allegiance and were thus out of the Dail, continued his fight for Irish independence outside the British Empire. Later, he decided on a change of tactics. At his suggestion, the Republican Deputies signed the oath, treating it as an 'empty formula,' and took their seats in the Dail on the Opposition Benches.

The Cosgrave Government ordered a new General Election in August, 1927. None of the parties secured a clear majority, but the Cos-

graveites being the largest group, Cosgrave was re-elected President of the Executive Council.

The Republicans decided to stay in the Dail and try constitutional methods to achieve their object, refusing at the same time to have social relations with the Government party.

The Irish Republicans drew up a very attractive programme containing high promises. At that moment Cosgrave introduced a public Safety Bill in the Dail as a permanent amendment to the Constitution; empowering the Government to suspend trial by jury and establish Military Courts, with powers to inflict death penalty. Both the Dail and the Seanad passed the measure. Two years later, there was a general world depression which affected Ireland as well. The Cosgrave Government increased taxation. All this gave the Republicans the opportunity they wanted, *viz.*, to denounce the Government for its extravagance and pro-British policy, and they successfully exploited the situation.

The General Election of February, 1932, resulted in the Fianna Fail capturing 72 seats out of a total of 153. De Valera, now being the leader of the largest single party in the Dail, decided to form the Government with the tacit help of the Labourites. On March 9, 1932, the Dail elected him as President of the Executive Council. Within a week of his assumption of power he publicly declared his determination to abolish the Oath. The Dail passed the necessary measure and even the Seanad, though it was feared it might raise difficulty, quietly acquiesced in it. Further amendments to the constitution were made one after another; the most important of which abolished the Seanad.

He used his power, influence, patriotism and tenacity to build up an Irish Republic. During the first five years of his Presidentship (under the Constitution of 1922) he succeeded in altering some important Articles in the Constitution. By the removal of oath Act, 1933, paragraph 2 of the introductory part of the constitution and the words "within the terms of the Scheduled Treaty" occuring in Article 50 relating to amendment of the constitution were deleted. Consequently, any amendment or construction of any articles in the constitution even though repugnant to the provision of the Scheduled Treaty was made valid.

De Valera prapared the draft of a new constitution for replacing the former one. The Bill was passed by the Oireachtas and then referred to the people. The plebiscite gave decisive verdict in favour of

De Valera. In this way, from 29th December, 1937, the Irish Republic came into existence, retaining, at the same time, her membership of the British Commonwealth. But on April 18, 1949 the Republic went out of the Commonwealth according to the Republic of Ireland Act of November 1948.

THE IRISH REPUBLIC OF 1938

The Constitution of the Irish Republic begins with an important Preamble which makes it clear that the people of Eire have adopted, enacted and given to themselves the Constitution, and thus emphasises the sovereignty of the people.

The Preamble then proceeds to state the objects of the Constitution, *viz.*, (1) to promote the common good, (2) to secure the dignity and freedom of the individual, (3) to attain true social order, (4) to restore the unity of the country, and (5) to establish concord with other nations.

The Constitution is a gift of the people to themselves. The most important feature of the Preamble is the full application of the principle of self-determination which is clear from the words: "We the people of Eire..do hereby adopt, enact, give to ourselves this Constitution." Unlike the constitutions of the three dominions, *viz.*, Canada, the Commonwealth of Australia, and the Union of South Africa, all of which were utlimately and formally enacted by the British Parliament even though the Commonwealth constitution was drafted by the representatives of the people and accepted by the people themselves in a referendum, the Constitution of the Irish Republic was adopted, enacted and given to themselves by the people. It is not a gift desired by the Irish people and given them by the British Parliament, as the following Articles affirm:

"The Irish nation hereby affirms its inalienable, indefeasible, and sovereign right to choose its own form of Government, to determine its relations with other nations, and to develop its life, political, economic and cultural in accordance with its own genius and traditions." (*Art. 1*). "Ireland is a sovereign, independent, democratic state." (*Art. 5*).

"1. All powers of government, legislative, executive and judicial, derive, under God, from the people, whose right it is to designate the rulers of the State and, in final appeal, to decide all questions of national policy, according to the requirements of the

common good.

2. These powers of government are exercisable only by or on the authority of organs of State established by this Constitution." (*Art. 6.*)

Eire a sovereign state. Nowhere in the Constitution is there any reference to the King or the British Empire. It is no longer a member of the Commonwealth. The headship of the State is vested in a President elected by the people. In this external relationship and international dealings, the Irish Republic ceases to have any part in the domestic politics of the British Empire. It determines its own international policy to be laid down by the Oireachtas which alone can be party to any international agreement, and without whose approval neither the State shall be "bound by any international agreement involving a charge upon public funds", nor shall any international agreement be part of the domestic law of the State.

Rights of citizens. Like the constitution of 1922, the new constitution of the Republic (1937) enumerates rights of citizens, but in greater details. In this Constitution, the Fundamental Rights have been divided under five distinct heads, *viz.*, Personal Rights (Article 40), Rights of the Family (Art. 41). Education (Art. 42), Private Property (Art. 43), and Religion (Art. 44). The personal rights secure to all citizens equality before the law; protection of their life, person, good name, and property; inviolability of dwelling; the right to assemble peaceably and without arms; and the right to form associations and unions. Article 41 recognises the family "as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law." The welfare of the family being indispensable to the welfare of the nation, its constitution and authority are guaranteed necessary protection. The duty of the women in the home is considered to be of very vital support to the State, hence mothers are not to be obliged by economic necessity to engage in labour to the neglect of their duties in the home. The institution of marriage is guarded; dissolution of marriage is prohibited.

The State acknowledges "the inalienable right and duty of the parents to provide, according to their means, for religious and moral, intellectual, physical and social education of their children," and leaves the parents free to send their children to any schools they like, without obliging them to prefer any particular schools; it makes a certain minimum standard of education, moral, intellectual and social,

compulsory. Primary education is made free and provision for giving reasonable aid to private, and corporate educational initiative, and for other educational facilities and institutions is made by the State.

"The State acknowledges that man, in virtue of his rational being, has natural right, antecedent to positive law, to the private ownership of external goods." And it accordingly guarantees to pass no law attempting to abolish the right of private ownership or the general right to transfer, bequeath, and inherit property. The exercise of these rights is regulated by the principles of social justice, and is subject only to those limits which the exigencies of common good may require.

The State guarantees freedom of profession and practice of any religion, subject to public order and morality, not to endow any religion, not to impose any disabilities or make discrimination on religious grounds. Every religious denomination is allowed "to manage its own affairs, own, acquire and administer property, movable and immovable, and maintain institutions for religious or charitable purposes."

Jurisdiction of the Irish State. Article 2 of the Constitution prescribes the territorial limits of the Irish Republic. "The national territory consists of the whole island of Ireland, its islands and the territorial "seas." The words "*the whole island of Ireland*" include the six counties of Northern Ireland which till to-day continues to be separately governed, uninfluenced by the Irish Republic, and with a separate government of its own.

The official name of the State is *Eire*, or in English language, Ireland, and not the Irish Free State as it used to be till 28th December, 1937. The national flag is the tricolour of green, white and orange, and the first official language is the Irish language, English being recognised as a second official language. All persons who were citizens of the Saorstat at the time of coming into operation of the Republican Constitution are recognised citizens of Ireland. The future acquisition or loss of citizenship is to be determined by law. In return for the rights guaranteed to the citizens (under Articles 40-44), already described, the Constitution lays down *fidelity to the nation and loyalty to the State as the fundamental political duties of all citizens* (Art. 9).

The Executive

The President of the State. The Republican Constitution makes

a very revolutionary change by avoiding all references to the King and by vesting the headship of the State in a President (*Uachtrannah Eireann)* who takes precedence over all other persons in the State and exercises and performs the functions conferred on the office by it.

Elective Office. The President is elected for a seven year term directly by the citizens through secret ballot on the system of the proportional representation by means of the single transferable vote. All citizens who were voters for Dail Eireann are also voters for the presidential election. In the United States of America till 1940, a particular holder of the office of President could succeed himself only once according to a well-established convention, but the Irish Constitution itself prescribes a limit in Art. 12 (3) 2: "A person who holds office as President shall be eligible for re-election to that office once, but only once." Every Irish citizen who has reached his thirty-fifth year of age is eligible for election to Presidentship.

How nominated. Nomination of candidates seeking election to Presidentship must be made either (1) by at least twenty members of the Oireachtas, or (2) by the Councils of not less than four administrative Counties as defined by law. Former or retiring Presidents may, however, nominate themselves.

The President is not a member of either House of the Oireachtas, but if a member of either House is elected President he has to vacate his seat in the House. Nor can the President hold any other salaried office or position. He enters upon his office by taking and subscribing publicly, in the presence of the members of both houses of the Oireachtas, of Judges of the Supreme Court and of the High Court, and other public personages, a declaration, solemnly and sincerely promising and declaring (*i*) to maintain the Constitution of Ireland and uphold its law, (*ii*) to fulfil his duties faithfully and conscientiously in accordance with the constitution and law, and (*iii*) to dedicate his abilities to the service and welfare of the people of Ireland.

How impeached. The President is assigned an official residence in or near the city of Dublin. His emoluments and allowances are determined by law. He may be impeached for stated misbehaviour. Either House of the Oireachtas, on receiving a signed notice from thirty of its members, may entertain a proposal to prefer a charge against the President, and the proposal is adopted only when a resolution to that effect is passed by two-thirds of the total members of that House. The charge is then investigated or caused to be investigated by the other House, and on being sustained by two-thirds

of its total membership, the President is removed from his office.

Powers of the President. Unlike the British King, the President of Ireland is subject to impeachment for stated misbehaviour, but like the King he is not answerable "to either House of the Oireachtas or to any court for the exercise and performance of the powers and functions to his office or for any act done or purporting to be done by him in the exercises and performance of these powers and functions." He exercises these powers and functions only on the advice of the Government, except where he is required to act in his absolute discretion with or in relation to the Council of State. Subject to the Constitution, additional powers may be conferred on the President by law.

The President appoints, on the nomination of Dail Eireann, the *Taoiseach* (head of the Government or Prime Minister), and on the latter's nomination, with the previous approval of the Dail, other members or ministers of the Government. On the advice of the Taoiseach, the President (*i*) accepts the resignation or terminates the appointment of any member of the Government, and (*ii*) summons and dissolves the Dail Eireann. In his absolute discretion he may, however, refuse to dissolve the Dail Eireann on the advice of a Taoiseach who has ceased to retain the confidence of a majority in the Dail. He may, at any time, in consultation with the Council of State, convene a meeting of either or both Houses of the Oireachtas.

Like the heads of States in other countries, the Irish President promulgates every law[1] made by the Oireachtas, holds and exercises, in accordance with law, supreme command of the Defence Forces of the State, grants Commissions to officers of the Defence forces, and exercises the right of pardon and the power to commute or remit punishment imposed by any court exercising criminal jurisdiction.

After consultation with the Council of State the President (*i*) may communicate with the Houses of the Oireachtas by message or address on any matter of national or public importance, and (*ii*) may address a message to the Nation at any time on any such matter, but every such message or address must have received the approval of the Government.

Limitations on powers. These powers of the President, great as they appear to be in theory, are limited in practice in two ways, *viz.*,

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[1] Every Bill passed or deemed to have been passed by both Houses requires his signature for enactment into law.

the institution of the Council of State, and the powers of the Government (Cabinet) rendering him only a constitutional head of the State.

In the absence of the President, or during his temporary or permanent incapacity, his powers are exercised by a Commission (akin to a Council of Regency in England) consisting of the Chief Justice (in his absence the President of the High Court), Chairman (or Vice-Chairman) of Dail Eireann, and Chairman (or Vice-Chairman) of Seanad Eireann.

The Council of State. The Council of State is a novel institution established by the Constitution. While in its advisory functions it may be likened, though only to a certain extent to the Privy Council of England or Canada and to the *Genro* or Elder Statesmen of Japan before 1945, its composition is considerably different from these bodies. It consists of (*i*) As *ex-office* members, the Taoiscach, the Tanaiste, the Chief Justice, the President of the High Court, the Chairman of Dail Eireann, the Chairman of Seanad Eireann, and the Attorney General; (*ii*) Every person able and willing to act as a member of the Council of State who shall have held the office of President, or the office of Taoiseach or the office of Chief Justice, or the office of the President of the Executive Council of Saorstat Eireann; and (*iii*) such other persons, if any, as may be appointed by the President under this Article to be members of the Council of State.

The Constitution authorises the President to appoint, acting in his absolute discretion, at any time and from time to time by warrant under his hand and seal, any persons whom he might consider fit to be members of the Council of State under category (*iii*) stated above, but the number of such persons as members of the Council at the same time must not exceed seven.

Every member of the Council of State, at the first meeting he attends, has to take and subscribe to a declaration solemnly and sincerely promising and declaring to faithfully and conscientiously fulfil his duties as a member thereof. A member of the Council of State appointed by the President may resign by submitting his resignation to the President; and the latter may, for reasons which he considers sufficient, by an order under his hand and seal, terminate the appointment of any member appointed by him.

The meeting of the Council of State may be convened by the President when and where he shall determine. The powers of the Council of State are purely advisory, but the President cannot perform and exercise functions and powers which he is required to perform

and exercise after consultation with the Council, unless on every occasion before so doing he shall have convened a meeting of the Council and the members present thereat shall have been given a hearing by him. It must, however, be remembered that the purely advisory nature of the functions of the Council of State and the presence of the Taoiseach (Prime Minister) in it preclude the possibility of the Council becoming a rival of the Government or Cabinet.

The Government. By Article 28 of the Constitution, the executive power of the State is exercised by or on the authority of the Government which shall consist of not less than seven and not more than fifteen members appointed by the President according to the provisions of the constitution. The Government owes collective responsibility to Dail Eireann. It prepares the financial Estimates of Receipts and Expenditure each year and submits the same to the Dail for consideration.

The Taoiseach. The head of the Government, or Prime Minister, is designed Taoiseach. He keeps the President informed on all matters of domestic and international policy: he nominates his deputy, designated the Tanaiste, who acts in place of the Taoiseach during the latter's temporary absence. All members of the Government must be members of Dail Eireann or Seanad Eireann, subject to two conditions, *viz.*, the Taoiseach, the Tanaiste, and the members in charge of Finance must be members of Dail Eireann, and not more than two of the members of the Government may be members of Seanad Eireann. Every member of the Government has the right to attend and be heard in each House of the Oireachtas. These provisions go to show the larger power of the Dail.

The Taoiseach may resign from his office by placing his resignation in the hands of the President, while any other member of the Government may resign by handing over his resignation to the Taoiseach for submission to the President who will deal with it as advised by the Taoiseach. The Taoiseach may at any time for reasons which seem sufficient for him require a member to resign and if the latter fails to comply his appointment shall be terminated by the President. The Taoiseach shall resign from office upon ceasing to command the confidence of a majority in the Dail, unless on his advice the President dissolves the Dail and orders a general election. The resignation of the Taoiseach from office automatically involves the resignation of all members of the Government, but Government continues in office till their successors are appointed.

Other matters like the organisation and distribution of business of the Departments of State and the designation of ministers (members of Government) in charge of the Departments, the discharge of the functions of a member during his absence, and remuneration of members, are all regulated by law laid down by the Oireachtas.

In short, the Government of Ireland is a responsible cabinet, owing collective responsibility to the popular branch of the legislature.

The Legislature

The National Parliament. The legislature of Ireland is officially named Oireachtas, consisting of the President, and a House of Representatives (Dail Eireann), and a Senate (Seanad Eireann), The Oireachtas sits near the City of Dublin. It may sit in such other place as law may determine. It is the sole legislative body of the State. Provision may, however, be made for the creation of subordinate legislatures and the powers and functions to be exercised by them. The Oireachtas may make a law providing for the establishment of functional or vocational councils representing social and economic life of the people, and to determine their duties, powers and rights, and their relations to the Oireachtas and to the Government.

Any law of the Oireachtas repugnant to the Constitution is invalid to the extent of repugnancy. Moreover, the Oireachtas cannot pass an *ex-post-facto* law. The right to raise and maintain military and other armed forces is exclusively vested in the Oireachtas.

The Oireachtas holds at least one session each year. Its sittings are usually public; but any House may, by two-thirds vote, decide in cases of special emergency to hold a private sitting. Each House is empowered to elect a Chairman and a Vice-Chairman to fix their remuneration, to frame its own rules of procedure and standing orders, to ensure freedom of debate, and to protect itself and its members against any person or persons molesting or attempting to corrupt members in the discharge of their functions. All questions in each House are decided by a majority of votes, the Chairman or presiding officer voting only when there is an equality of votes. Proceedings of each House are privileged. Members are immune from arrest while going to or returning from the House and are not amenable to any court other than the House itself for any thing spoken in the House. They get allowances in respect of their duties, and enjoy free travelling facilities. No person can be a member of both

the Houses at the same time.

Every citizen, without distinction of sex, who has reached the age of 21 years is, unless otherwise disqualified (no disqualification being allowed only on the ground of sex), is qualified to be (*i*) a voter to, and eligible for membership of Dail Eireann, and (*ii*) eligible for membership of Seanad Eireann. Each voter is entitled to only one vote.

The Lower House. Since 1947, Dail Eireann consists of 147 persons elected on the basis of proportional representation by means of single transferable vote. The constituencies are fixed by law, and are assigned members at the rate of one member for not more than thirty thousand nor less than twenty thousand of the population, the same proportion being maintained for all constituencies. No constituency is to be so arranged as to be entitled to less than 3 members. Constituencies are to be revised at least every twelve years, but no alteration in them can affect the life of the then existing Dail. Normal life of Dail Eireann is seven years, unless sooner dissolved. This normal term of 7 years may be reduced by law only. A general election for the Dail is held not later than thirty days after the dissolution of the Dail, polling being held, as far as practicable, on the same day throughout the country, and the new Dail meets within thirty days of that polling day. The Chairman of Dail Eireann is automatically re-elected member at a general election, as provided by law. Dail Eireann alone exercises the right to consider receipts and expenditure estimates, but only when these are presented to it by the Government.

The Upper House. The upper house (Seanad Eireann) consists of sixty members of whom eleven are nominated by Taoiseach, with their prior consent, and the remaining forty-nine are elected thus: 3 by the National University of Ireland, 3 by the University of Dublin, and forty-three from five panels of candidates. All elections are held by proportional representation. The franchise for election of University representatives is fixed by law. The five panels for election of the 43 members are so formed as to contain persons having knowledge and practical experience of: (1) National Language and Culture, Literature, Art, Education, and similar interests determined by law; (2) Agriculture and allied interests and Fisheries; (3) Labour, organised and unorganised; (4) Industry and commerce, including banking, finance and accountancy, engineering and architecture; (5) Public administration and social services, including voluntary social activities. Not less than five and not more than eleven members are

elected from each panel, but provision may be made by law for direct election by a functional or vocational group or association or council or a certain number assigned to each panel.

Laws: How Made. A Bill, other than a Money Bill, may originate in either House: Money Bills can originate in Dail Eireann only. Every Bill other than a Money Bill initiated in and passed by the Dail may be amended by the Seanad; and the Dail then considers such amendment. A Bill initiated in and passed by the Seanad but amended by the Dail shall be considered in its amended form as a Bill initiated in the Dail. A Bill passed by either House and accepted by the other is deemed to have been passed by both Houses.

Money Bills. A Money Bill passed by Dail Eireann is sent to Seanad Eireann for its consideration. The latter may recommend changes within twenty-one days of its receipt from the Dail which may then reject any or all of these recommendation made by the Seanad. If, however, Seanad Eireann fails to return the Bill within twenty-one days, or returns it within that period with recommendations to which Dail Eireann does not agree, the Bill is deemed to have been passed by both Houses at the expiration of the said period of twenty-one days. Thus Seanad Eireann can, at the most, delay the passing of a Money Bill into law by twenty-one days.

A Bill is a Money Bill if it deals with all or any of the matters affecting "the imposition, repeal, remission, alteration or regulation of taxation; the imposition, for the payment of debt or other financial purposes of changes on public moneys or the variation or repeal of any such charges; supply; the appropriation, receipt, custody, issue or audit of accounts of money; the raising or guarantee of any loan or repayment thereof; matters subordinate and incidental to these matters or any of them." The Chairman of Dail Eireann certifies a Bill to be a Money Bill, if it is such in his opinion, and this certificate is final and conclusive unless Seanad Eireann resolves, at a sitting at which not less than thirty members are present, that the question whether the Bill is a Money Bill or not be referred to a Committee of Privileges consisting of equal number of members from the two Houses with a Judge of the Supreme Court as Chairman who exercises only a casting vote in case of equality of votes.

Conflicts between the two Houses: how solved. A period of ninety days, beginning from the day on which a Bill, not being a Money Bill, is sent by Dail Eireann to Seanad Eireann, is prescribed within which Seanad Eireann is required to consider the Bill. This

period may be increased by mutual agreement of the two Houses. If within the prescribed period Seanad Eireann rejects a Bill or passes it with amendments to which Dail Eireann does not agree, the Bill, if Dail Eireann so resolves, within one hundred and eighty days after the lapse of the said prescribed period, is deemed to have been passed by both Houses on the day of such resolution.

Article 24 makes special provision for restricting the prescribed period for consideration by Seanad Eireann of a Bill passed by Dail Eireann, if the Taoiseach certifies by messages in writing addressed to the President and to the Chairman of each House that in the opinion of the Government the Bill is necessary for preserving public peace and security, or that due to a state of internal or external emergency the time for the consideration of the Bill be abridged, provided the Bill does not seek to amend the Constitution. And if Dail Eireann resolves in favour of abridgment of the period and the President, after consultation with the Council of State, concurs, the period shall be accordingly abridged. In that case the Bill, if it is rejected by Seanad Eireann or is passed with amendment to which Dail Eireann does not agree, or is neither rejected nor passed by Seanad Eireann within that abridged period, shall be deemed to have been passed by both Houses at the expiration of a period of ninety days, unless before the expiry of this period both Houses resolve that the law do remain in force for such longer period as is specified in that resolution.

All these restrictions on the legislative powers of Seanad Eireann reduce it to the position of a revisory body which may delay but not prevent the passing of legislation.

Signature of the President. When a Bill, other than one seeking to amend the Constitution, is passed or is deemed to have been passed by both Houses the Taoiseach presents it to the President for his signature and promulgation by him as law, who is required to sign it not earlier than five nor later than seven days after the presentation of the Bill. But at the request of the Government, with the prior consent of Seanad Eireann, the President may sign a Bill earlier than five days.

A Bill signed by the President becomes a law on the day of signature, unless otherwise stated and is promulgated as a law by publication, by his direction, of a notice in the *Irish Oifigiuil* (the official gazette).

Any Bill, other than one containing a proposal for amending the Constitution, deemed to have been passed by both Houses shall, if a majority of the members of Seanad Eireann and one-third of the

members of Dail Eireann send a joint petition to the President within four days of its passing that 'the bill contains a proposal of such national importance that the will of the people ought to be ascertained,' be not signed by him. He shall consult the Council of State and decide within ten days whether to sign and promulgate it as law or not. In the latter case, he shall communicate his decision to the Taoiseach and to the Chairman of each House. Such a Bill will become law only if within a period of eighteen months from the date of the President's decision, (*i*) it has been approved by the people at a Referendum[1] in accordance with section 2 of Art. 47, or (*ii*) it has been repassed by Dail Eireann after a dissolution and its reassembly. When it has been so approved, it shall be signed and promulgated as law by the President.

Amendment of the Constitution. With regard to the amendment of the Constitution, Article 46 says that any provision of the Constitution "may be amended, whether by way of variation, addition or repeal," in the prescribed manner. Every proposal for amendment of the Constitution must initiate in Dail Eireann as a Bill.[2] When it has been passed or is deemed to have been passed by both Houses, it is submitted to the people by Referendum, and if, on being so submitted to the people, a majority of the votes cast at the Referendum are cast in favour of its enactment into law the proposal shall be deemed to have been duly approved by the people. It will then be signed by the President forthwith and promulgated by him as a law.

Articles 34-38 relate to the administration of justice, constitution of the courts and their respective jurisdiction, appointment of judges, and the trial of offences.

The courts consist of Courts of First Instance (a High Court invested with the same powers as under the constitution of 1922, and courts of local and limited jurisdiction), and a court of final appeal (called the Supreme Court). In general, the respective powers of these courts are almost the same as they enjoyed under the constitution of 1922. Two important differences are that judges of all the courts are now appointed by the President, the representative of the Crown having dis-

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[1] A Bill is considered to have been vetoed by the people at a Referendum only if it is rejected by a majority of the votes polled and provided the votes so cast against it amount to not less than one-third of the total votes on the register, otherwise it is considered to have been approved by the people.

[2] "A Bill containing a proposal or proposals for the amendment of this Constitution shall not contain any other proposal." Art. 46, section 4.

appeared in the new constitution, and there is no right of appeal to His Majesty in Council. The Supreme Court is, therefore, the highest judicial tribunal; its decisions are final and conclusive. In other respects the courts retain their previous status and jurisdictions. Independence of judges, their security of tenure (except their removal for stated misbehaviour on an address presented to the President by both Houses of the Oireachtas), irreducibility of their remuneration, etc. are guaranteed.

Every person appointed a judge of any of the courts under the Constitution has to make and subscribe a declaration, solemnly and sincerely promising, and declaring in the presence of the Almighty God, faithfully and to the best of his knowledge to execute the office of Chief Justice (or as the case may be) without fear or favour, affection or ill-will towards any man, and to uphold the Constitution and the law. A Judge who declines or neglects to make such declaration (before entering upon his office or within ten days of his appointment) is deemed to have vacated his seat.

The following matters are regulated in accordance with law, *viz.*,

(*i*) the number of judges of the Supreme Court, and of the High Court, the remuneration, age of retirement and pensions of such judges,

(*ii*) the number of judges of all other courts, and their terms of appointment, and

(*iii*) the constitution and organisation of the said courts, the distribution of jurisdiction and business among the said courts and judges, and all matters of procedure.

The Constitution also provides for the making of a law to prescribe the constitution, powers, jurisdiction and procedure of special courts which "may be established by law for the trial of offence in cases where it may be determined in accordance with such law that the ordinary courts are inadequate to secure the effective administration of justice and the preservation of public peace and order." It allows the setting up of military tribunals for the trial of offences against military law committed by persons while subject to that law, "and also to deal with a state of war or armed rebellion."

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BOOK FOUR

THE UNITED STATES OF AMERICA

Chapter 17. Federal Government in the U. S. A.
„ 18. Governments of the States in the U. S. A.

I never expect to see a perfect work from imperfect man. The result of the deliberations of all collective bodies must necessarily be a compound, as well of the errors and prejudices, as of good sense and wisdom, of individuals of whom they are composed. The compacts which are to embrace thirteen distinct States in a common bond of amity and union, must as necessarily be a compromise of as many dissimilar interests and inclinations. How can perfection spring from such materials ?

— HAMILTON

* * *

Had no important step been taken by the leaders of the Revolution for which a precedent could not be discovered, no government established of which an exact model did not present itself, the people of the United States might, at this moment, have been numbered among the melancholy victims of misguided councils, must at best have been labouring under the weight of some of those forms which have crushed the liberties of the rest of mankind. Happily for America, happily, we trust, for the whole human race, they pursued a new and more noble course. They accomplished a revolution which has no parallel in the annals of human society. They reared the fabrics of governments which have no model on the face of the globe.

—THE FEDERALIST

17

THE UNITED STATES OF AMERICA

FEDERAL GOVERNMENT IN THE U. S. A.

> As America became English, English institutions in the colonies became American. They adapted themselves to the new conditions and new conveniences of political life in separate colonies, colonies struggling at first, then expanding, at last triumphing ; and without losing their English character gained an American form and flavour.
>
> —WOODROW WILSON

THE UNITED STATES of America, the largest single unit in the New World, has an area of 3,557,098 square miles and a population of 154,233,234[1] human souls as estimated on 1st April, 1950 by the United States Bureau of Census. These figures include the area and population of the U. S. A. possessions also. The continental federation itself consists of forty-nine states, each with its own State Government and an area of 3,545,791 square miles and a population numbering 150,987,006. From the point of view of population the United States stands fourth in the world, the other three with larger population being China, India and Russia. The rapid growth of the United States' population has been one of the outstanding phenomena of world history. Yet the density of population in the United States is only 50·7 per square mile as compared with 848 per square mile in the United Kingdom, 382 in the German Reich and 400 in Japan. The country lies between the Pacific Ocean on the west and the Atlantic Ocean on the east. Its varied geographical conditions have created political problems and often determined the manner of their ultimate solution. In practically every national issue, geography has moulded the political life of the United States. It the modern world, the United States have placed

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[1] The figures relate to the year 1946. On August 1, 1958, the population was reckoned at 174,326,000 according to the Washington census office announcement of September 13, 1958.

the first example of a truly democratic federal state grown out of a congeries of units which had little in common till the outbreak of the War of Independence.

History of the Constitution

The Early Colonies. The United States of America is considered to be "the greatest experiment in government that the world had ever known." Originally there were thirteen colonies on the Atlantic side of the continent peopled largely by English settlers, though other European nations too contributed a smaller part of the population. The early settlers had brought to their new homes the political institutions and instincts of their Mother Country, and this fact exercised a profound influence upon the later history of that part of the New World. There were three classes of colonies, *viz.*,

(1) the "*Crown Colonies*" which included New Hampshire, New York, New Jersey, North and South Carolina and Georgia, each ruled by a governor who represented the King's authority and was assisted by a council;

(2) the "*Proprietary Colonies*" including Pennsylvania, Delaware, and Maryland, which were under the rule of individuals who had obtained the right to exercise the powers of government and who stood in the same relation to them as did the King to "crown colonies;" and

(3) the "*Charter Colonies*", Rhode Island and Connecticut, in which the powers of government had been conferred directly upon the freemen of the colony, by royal charters.

Similarities between the colonies. There were some minor differences in the political frameworks of these different classes of colonies but the points of resemblance were very great. "In all the colonies there was constant friction between the assembly elected in the colony and the Governor and Council appointed by royal authority. The Governors brought with them from home instructions which frequently did not conform to the interests or ideas of the colonists.. They (the colonists) doubtless did much to harass and annoy the representatives of the King. At the same time the officers sent out from England were frequently men of little tact and discretion, with the result that they needlessly wounded the susceptibilities of the American".[1] The result was that a very great conflict of interests

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[1] T. H. Reed, *Form and Function's of American Government*, pp. 17-18,

ensued between the rulers and the ruled, and ultimately "the people came to regard the assembly as their natural friend and the governor as their enemy. In other words, the legislature became popular and the executive unpopular. . Another consequence of the struggle was that the speaker of the assembly, as its leader and as the highest officer owing his power to the popular will became the most influential political leader in the government"[1].

Colonists desired English institutions. The colonists worked in their new homes the institutions of their Mother Country to the extent they could. Their most valuable inheritance was the "English common law" in which "were embedded all the fundamental rights of Englishmen which even the King must respect and which at one time it was supposed even an Act of Parliament could not destroy."[2] Ultimately it was the conflict over these rights that brought about the estrangement between the colonists and the Mother Country. In the third quarter of the eighteenth century, the colonists expressed their resentment against encroachment upon their cherished rights by the British Parliament. After the close of the Seven Years' War in 1763, the British Parliament imposed several taxes on the thirteen colonies to replenish its treasury. The chief of these taxing measures—the Sugar Act (1774), the Currency Act (1764), the Stamp Act (1765), the Townshend Duties (1767), the Tea Act (1773), and the Intolerable Acts (1774)—taxed and regulated the colonial economy and imposed serious restrictions upon colonial self-government. The colonists resisted the power of the British Parliament to levy these taxes. They did not submit to taxation by the Crown and Parliament, but stuck to the principle "No taxation without representation," the first commandment in the Englishman's political Bible.

The colonists organised protest meetings and in October 1765 a Stamp Act Congress met to denounce the hated tax on newspapers, magazines, commercial papers, and other documents. An organisation of patriots, called the Sons of Liberty, was formed to resist British Parliamentary encroachments on the rights of the colonies. The British Government took all possible repressive measures to suppress the rising anti-British feeling in the colonies. These thirteen colonies, at last, declared war against England and the British Crown,

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[1] *Ibid.* 19. Cf. the case of Papineau, in Canadian history, and that of the late ex-President V. J. Patel in India.

[2] *Ibid.* p. 21,

and on 4th July, 1776, published the "Unanimous Declaration":

Colonies declared War on the Mother Country. "That these United Colonies are, and of Right ought to be Free and Independent States, that they are absolved from all allegiance to the British Crown, and that all political communication between them and the State of Great Britain is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliance, and to do all other Acts and Things which Independent States may of right do." This resolution was based upon the principle enunciated in the preamble. "We hold these truths to be self-evident that all men are created equal, that they are endowed by their Creator with certain unalienable rights that among these are life, liberty and the pursuit of happiness." And Governments were instituted to secure these rights.

League of colonies. The words "Free and Independent States may of right do" included in this famous Declaration, had far-reaching effects on the constitutional struggle of the colonies. The first thing that engaged the attention of the colonists, soon after they had declared their independence, was to prosecute the war unitedly, and for this purpose they drafted the Articles of Confederation, through the instrumentality of a Committee appointed on June 11, 1776. These Articles were approved by the Congress of the States on 15th November, 1777. Though these Articles were ratified by all the States not before 1781, they were put into force soon after they were approved by the Congress. The first of these Articles named the confederation "The United States of America," a name continued ever since. The second Article stated: "Each state retains its sovereignty, freedom, and independence and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States in Congress assembled." Thus the states jealously guarded their individual entity and agreed to come together for very specific purpóses only, which were, thus, made clear in the third Article, *viz.*, "The said States hereby severally enter into a firm league or friendship with each other for their common defence, the security of their liberties and their mutual and general welfare, binding themselves to assist each other against all force offered to, or attacks made upon them, on account of religion, sovereignty, trade, or any other pretence."

Nature of the Confederation. The Articles established a Congress, the only common institution, composed of the delegates of states, each state being entitled to send not more than seven and not

less than two representatives. Each state was entitled to have only one vote, irrespective of the number of its delegates, so that the majority of the delegates of a state represented that state's will; in case of a tie between the delegates from a particular state, its vote was lost. During the recess of the Congress, a Committee of States composed of one member from each state could do anything which the Congress was entitled to do. The Congress elected its own presiding officer, called "president", but he had no executive authority attached to his office. "There was no intention of permitting another kind of King to be smuggled in upon them in the guise of a president".[1]

No real perpetual union. The intention of the colonists was undoubtedly to establish a perpetual union of the States. "But those Articles gave no real integration to the confederated states; they were from the first a rope of sand which could bind no one....Under them the powers of the Confederation were to be exercised by its Congress : its only executive or judicial organs were to be mere committees or agencies of the Congress : and it was in fact to have no real use for executive parts for it was to have no executive rights. Its function was to advise, not command. It hung upon the will of the states. The Articles were in effect scarcely more than an international convention".[2] No important resolution could be passed without the concurrence of all states to ask them even to send their representatives to the Congress, with the result that the confederation lost its cohesion and the Congress its power. The Congress could only tender advice. "It could ask the states for money, but it could not compel them to give it; it could ask them for troops, but could not force them to heed the requisition; it could make treaties, but must trust the states to fulfil them; it could contract debts, but must rely upon the states to pay them. It was a body richly enough endowed with prerogatives, but not at all endowed with powers".[3] Somehow the war of independence was won and the peace treaty of 1783 gave international recognition to the United States. New problems then arose which the Congress had to face, but it found itself incompetent to tackle them, as it had no legal or constitutional authority to enforce its decisions. The Congress was 'a mere consultative and advisory board'. It failed to keep the colonies together after the war was over. As time went on,

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[1] Read, *Form and Functions of American Government* p. 39.
[2] Wilson, *The State*, (Edition 1900), para 1067.
[3] *Ibid.* para 1069.

the states showed little regard for the authority of the Congress. They organised their own army and navy and even sent their own agents abroad to negotiate agreements and treaties as if they were sovereign states. The Congress looked helplessly on as it had no executive authority, nor any means at its disposal, to check these fissiparous tendencies and save the unity of the thirteen states, after independence had been won.

"It was the fatal executive impotency of the Confederation which led to the formation of the present stronger and more complete government".[1] The states of Maryland and Virginia quarrelled over the question of navigation of the Potomac. The Commissioner appointed to settle the dispute recommended the appointment of a new commission to go into the whole question of tariff enforced by the two states. Virginia called a convention 'to consider the extension of the powers of the Confederation with regard to commerce.' The Convention met at Annapolis in 1786, attended by delegates from only five of the states. The Convention did not wait for the arrival of other delegates and adjourned after passing a resolution calling upon the Congress to summon a convention of delegates of all the states, to meet in Philadelphia, to consider the general question of amending the Articles of Confederation, without which, it thought, the smooth working of the Union was impossible.

The Philadelphia Convention. Accordingly the Congress summoned the famous Constitutional Convention of Philadelphia (1787). The delegates to the Convention were all men of experience in public affairs, and therefore they approached the problem in a practical way. Their object was 'to erect a stable central government, at the same time preserving in as large a measure as possible the independence of the states.' As a result of prolonged discussions they drafted the constitution of 1787, which radically changed the character of the government of the United States by allowing the federal government to act directly on the citizens of the States.

The Constitution of 1787

The Congress submitted this constitution to the States for approval, and when on June 21, 1788, the ninth State (New Hampshire) signified its assent, it was put into force in all the nine ratifying States. The

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[1] *Ibid*. pp. 459, 60.

first Congress under the new constitution met on 4th March, 1789.

Constitution is the supreme law. The most important part of the constitution (1787) is its preamble which states that the people of all the States 'do ordain and establish this Constitution for the United States of America,' and is a very great improvement upon the Articles of Confederation which created a union between the States without reference to the people. Another significant provision is contained in Article VI, clause 2, which states: "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." This makes the constitution secure and the government of the union very stable, because whenever the law of any State or of the federal government comes into conflict with the constitution, the latter prevails, and the last word to decide such a case rests with the Supreme Court of the United States which is an independent judiciary.

Other features of the constitution. It is the briefest constitution any modern state has. The Americans have retained two cardinal principles in its making, *viz.*, the sovereignty of the people, and the equality of the States inside the federal union. They have also provided for separation of powers almost to the extreme end. The legislature, the executive, and the judiciary are quite independent of each other, as will be discussed later. It is a very rigid constitution and till now only twenty-two amendments have been made. It contains what is called the "system of checks and balances." The constitution is the first example, in the modern world, of a written constitution. It has set up a federation of specified powers in the centre and all other powers in the states. It has instituted a novel type of Presidential executive, with democratic backing and fixed term of office. The constitution safeguards the rights of the individuals and the powers of the centre as well as of the units through an independent Supreme Court which is at once a novel contribution to political science and an institutional means to limit the jurisdiction of competing governments. There are certain provisions, *e. g.*, vesting the Senate with the power of making treaties and appointments although these powers have been criticised. But the constitution-makers of 1787 were providing for the conditions then prevailing, and, therefore, "It is wrong to judge the government of yesterday by the standard of

today."[1] The constitution has worked not very unsatisfactorily, and it has enabled that republic to grow bigger and bigger, and more prosperous since it was made. It is true that during this period of nearly a century and a half, severe conflicts have arisen and that the Civil War of 1861, it seemed for a time, nearly broke the union, yet its continuance, subject of course to some of the most important amendments, is proof of its being more stable than the constitution of France, which has been radically altered several times during the same period.

The constitution, though rigid in form, has developed in practice through well-established conventions. The President's power of appointments is regulated now by "senatorial courtesy", a good example of convention. His State of the Union messages, delivered in person or through some other person, are considered (like the speech from the Throne in England) as the statement of the policy he is to pursue in administration, and, therefore, Congress legislates on matters discussed by him to enable him to put his policy into execution. The working of the political parties, particularly the election of the President, is the best example of convention. Nowhere does the Constitution refer to elections on party basis, but the whole system of election is now worked on party lines. The Presidential electors are chosen on party lines and they vote ultimately for the party nominees for presidency and vice-presidency. The Committee System in the Congress is also the result of conventions. The Committees are formed on party lines. The caucus of the party actually governs party matters and even the President dare not offend the caucus. It is entirely due to convention that national conventions of the parties decide upon party candidates for election to Congress and other offices. The Primaries in States, which meet for adopting candidates for Senate, are also based upon a convention. Thus conventions have supplied blood and flesh to the skeleton of the American Constitution.

Powers of Federal Government

The federal government of the United States of America has specifically defined powers to be exercised by the several parts of the federal machinery. The legislative organ, the Congress of the United States (composed of the Senate and the House of Representatives), has the

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[1] *Form and Functions of American Government*, p. 43.

following 18 powers according to section 8, of Article I:

(1) To lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises, shall be uniform throughout the United States;

(2) To borrow money on the credit of the United States;

(3) To regulate commerce with foreign nations, and among the several States, and with the Indian tribes.

(4) To establish a uniform rule of naturalisation, and uniform laws on the subject of bankruptcies throughout the United States;

(5) To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

(6) To provide for the punishment of counterfeiting the securities and current coin of the United States;

(7) To establish post offices and post-roads;

(8) To promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

(9) To constitute tribunals inferior to the Supreme Court;

(10) To define and punish piracies and felonies committed on the high seas, and offences against the law of nations;

(11) To declare war; grant letters of marque and reprisal, and make rules concerning captures on land and water;

(12) To raise and support armies but no appropriation of money to that use shall be for a longer term than two years;

(13) To provide and maintain a navy;

(14) To make rules for the government and regulation of the land and naval forces;

(15) To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions;

(16) To provide for organising, arming, and disciplining the militia, and for governing such parts of them as may be employed in the service of the United States, reserving to the States respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

(17) To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the

State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings: And

(18) To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or office thereof.

The power to declare war rests with the Congress, but the President being his own foreign minister can, by his own handling of international dealings, bring about a state of affairs in which Congress may be left no other course than to declare war. During the period 1789 to 1942, the Congress declared eleven wars as given below:—

1. War of June 18, 1812, against England.
2. Mexican War, May 13, 1846.
3. Spanish-American War, April 25, 1898.
4. War with Germany, April 6, 1917.
5. War with Austria, December 7, 1917.
6. War with Japan, December 8, 1941.
7. War with Germany, December 11, 1941.
8. War with Italy, December 11, 1941.
9. War with Bulgaria, June 5, 1942.
10. War with Hungary, June 5, 1942.
11. War with Roumania, June 5, 1942.

Section 9, of Article 1 further delimits the powers of the Congress by putting negative checks on it, thus :

1. The Congress cannot suspend the privilege of a writ of *habeas corpus* unless there is a state of actual rebellion or invasion.
2. It cannot pass *ex-post-facto* law.
3. It cannot grant any title of nobility.

When the constitution was framed in 1787, the question of including a Declaration of Rights of citizens had not assumed sufficient importance, because the real issue at that time was that of the rights of the States *versus* the powers of the central government. Four years later, in the year 1791, no less than ten amendments to the constitution were made, the first nine of which guaranteed the rights of the citizens, and thus put a check on the arbitrary powers of the central government. These amendments laid down:

1. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press or of the right of the people peaceably to assemble and to petition the government for a redress of

grievances."

2. "A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed."

3. "No soldier shall, in time of peace, be quartered in any house without the consent of the owners, nor in time of war but in a manner to be prescribed by law."

4. People will be 'secure in their persons, houses, papers and effects, against unreasonable searches and seizures.'

5. Trial for capital or other infamous crime will be by a grand jury. No accused will be compelled to be a witness against himself.

6. In all criminal prosecutions every accused shall be entitled to speedy and public trial by an impartial jury.

7. In ordinary suits involving an amount exceeding twenty dollars, right of trial by jury will be preserved.

8. "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

9. "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."

Amendment fifteen passed in 1870, states that no citizens of the United States shall be denied the right to vote, nor shall that right be abridged, "on account of race, colour, or previous condition of servitude." Again, amendment nineteenth (1920) extended the right to vote to both sexes.

Delimitation of powers. The tenth amendment (1791) further limited the powers of the central government *vis-a-vis* the States by providing that "The powers not delegated to the United States by Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Despite these limitations on the powers of the central government, and the reservation of the residuary powers to the States the authority of the government has been increasing progressively due to several factors. Firstly the *Doctrine of Implied Powers* enunciated by the Supreme Court, especially under Chief Justice Marshall, in the actual interpretation of the constitution, has largely strengthened the central government.

Increase of powers. As already mentioned in this chapter, para (18) or Section 8, Articles I of the constitution has been interpreted so liberally as to invest the central government with very great powers. Secondly, the growth of international relations and commerce have enabled the federal government to increase the sphere of

its activity without causing offence to the advocates of the rights o States. Thirdly, in the light of experience of the actual working of the constitution, certain amendments have also increased the powers of the federal government. For example, para (4) of section 9, Article I of the constitution, as drafted in 1787, prohibited the central government to lay direct taxes except under certain rigid conditions, but the Sixteenth Amendment removed the restriction by providing that "The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration." The successive extensions of territory beginning with the Louisiana Purchase in 1803, led to the development of the responsibilities of the central government. The compelling results of the two world wars have made the United States the strongest and most influential nation. New responsibilities have been undertaken and to discharge these wide powers have been exercised both by the Congress and the President, without the necessity of going through the process of Constitutional amendments. And lastly, the recent impact of world forces, *e.g.*, the Pacific problem, the economic depression, and international trade have so much affected all nations that the United States government has easily acquired larger jurisdiction with the tacit consent of the people. The regime of President Roosevelt who had acquired almost dictatorial powers affords us a brilliant example. President Eisenhower, by enunciating new doctrines for different regions of the world, has increased the responsibilities of the American government and virtually denounced the Monroe Doctrine of 1823.

The Federal Legislature

The Congress of the United States of America is the legislative organ of the federation, and consists of two chambers, the Senate and the House of Representatives. Article I of the original constitution (1787) and the Seventeenth Amendment (1913) state the powers, composition, and relations of the two chambers.

The House of Representatives is the lower or popular chamber of the U. S. A. Congress, elected directly by the citizens of the States. Originally it was provided that for each 20,000 of the population there would be elected one Representative, but that each State would have at least one Representative, and that at every decennial census the number of Representatives would be revised, but the ratio for

all States would be the same. Consequently, the original number 65 of the Representatives went on steadily increasing every ten years, on account of the rapid increase in population and the creation of new States. The Fourteenth Amendment (1868) introduced certain changes in election, for the increase in population was so rapid that by electing one Representative for every 20,000 of the population the size of the House would have become too unwieldy. The assignment of members was, therefore, made by Congress after every decennial census leading to great changes, *e. g.*, 1 representative for each 30,000 (as in 1792) to one for every 345,000 in 1951. The present strength of the House, as fixed by the Reapportionment Act of 1929 is 435 and this has been fixed permanently. This gives one Representative for every 345,000 of the 1951 population[1]. These 435 Representatives were distributed according to the census of 1950 between the various States thus: Alaska 1, Alabama 9, Arizona 2, Arkansas 6, California 30, Colorado 4, Connecticut 6, Delaware 1, Florida 8, Georgia 10, Idaho 2, Illinois 25, Indiana 11, Iowa 8; Kansas, 6, Kentucky 9, Louisiana 8, Maine 3, Maryland 7, Massachussetts 11, Michigan 18, Minnesota 9, Mississippi 6, Missouri 13, Montana 2, Nebraska 4, Nevada 1, New Hampshire 2. New Jersey 14, New Mexico 2, New York 43, North Carolina 12, North Dakota 2, Ohio 23, Oklahoma 6, Oregon 4, Pennsylvania 30, Rhode Island 2, South Carolina 6, South Dakota 2, Tennessee 9, Texas 22, Utah 2, Vermont 1, Virginia 10, Washington 7, West Virginia 6, Wisconsin 10 and Wyoming 1.

Electoral districts. The number of Representatives to which every State is entitled is fixed by the Congress itself, but the "congressional districts" are fixed within a State by the State itself. "In fixing these lines the State legislatures frequently resort to what is known as *gerrymandering*. That is, if the Republicans happen to control the legislature of a State when a redistricting bill is pending, they crowd all the strongly Democratic counties into as few districts as possible, thus insuring Republican representation in the greatest possible number of districts for the decade ahead."[2] But when the Democrats are in power, they resort to similar device about grouping in their favour. The House being composed on population basis, great dis-

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[1] Alaska having been admitted as the 49th State on July 7, 1958, has been given one representative, hence one of the larger States will lose 1 representative out of its present quota given below to keep the total at 435.

[2] Haskin, F. J. *The American Government*, p. 305.

parities may be observed in the representation of the States. For example, the whole of the sparsely settled State of Wyoming sends only one Representative, as it has a population of 250,742 souls (1940 census), while the single city of New York elects as many as 25 Representatives. All attempts to secure equal electoral districts have so far failed. As it is left to the States to demarcate the districts, state party influences have stood in the way of achieving districts with equal population. For example, Texas made its last district redistribution in 1933 and all efforts to reapportionment have failed, with the result that the population of the electoral districts varied from 226,739 in the least populous to 806,701 in the most populous (as in 1952). The second congressional district of South Dakota had only 159,099.

Franchise. All the inhabitants of the age of at least 21 years, who have acquired rights of citizenship are entitled to vote. Each representative must be twenty-five years of age and a resident of the State he represents and must have been a resident of the United States for at least seven years. Most of the representatives are residents of the districts they represent but there have been several cases of representatives who were elected from the districts in which they did not reside at the time of election. The life of every House is fixed at two years, so that after every two years, a new House is elected in November, but the newly elected members occupy their seats in the House only on the 3rd January following, the actual date from which the life of every new House is counted.

Local representation. The Representatives are residents of the districts which they respectively represent and this has resulted in obtaining real local representation, though not without loss of efficiency in cases where a district is not very much advanced to produce a first class legislator. This sytem "has kept back many good men from becoming candidates. It is one of the little ironies of American politics that some districts will be rich in Congressional material, while in others there is none."[1] The result is that when a candidate is defeated in his own district, he has no other constituency open to him. It is true that the members of the lower chamber are, on the average, 'practical, hard-headed men of good native capacity,' usually more than half being university graduates. Even then, "A seat in Congress fails to attract many men of high intellectual quality because much of the work it involves is dull and tiresome for it consists

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[1] *Form and Functions of American Government*, pp. 265-266.

in satisfying the demands of constituents for places, pensions, and help in their business undertakings, as well as in trying to secure grants of public money for local objects."[1]

Emoluments of members. Each Representative or Senator gets an annual salary of 12,500 dollars and in addition 2500 dollars as tax fee clerk hire, stationery allowances, and travelling allowance at 20 cents per mile; the last item in the case of Representatives from the Pacific Coast comes upto 2500 dollars per term. Any member of the House or Senate may retire and get retirement annuity at the age of 62 after he has served at least six years in either House, and has paid into the retirement fund the prescribed deduction of six per cent of his salary for the five years previous to his retirement. The amount of annuity is calculated by multiplying 2½ per cent of the salary received as a Congressman by the number of years of Congressional service, subject to a maximum of 75 per cent of the last salary. On the whole, "The House of Representatives is perhaps the most expensive law making institution in the world."[2] The Representatives are allowed to send their mail post free. They are immune from arrest, "except for treason, felony, or breach of the peace," while coming from and going to a session. They enjoy freedom of speech in the House, but for making indecent remarks a member may be expelled with the concurrence of two-thirds of the House.

House controls its procedure. The House has full control over its method of procedure. It keeps a journal of its proceedings to be published from time to time, though certain portions, if deemed necessary, may be kept secret. The House meets for every annual session on the first Monday in December. The House has its own post office, its own restaurant and other offices.

Officers of the House. The new House of Representatives meets on the 3rd of January, following its election. The first business before it is the election of the Speaker, Clerk Chaplain, Postmaster, Sergeant-at-Arms, and Doorkeeper. This is done on party lines, each party caucus nominating its own candidates, the party in majority winning in the ballot. A tradition has been established that Speakers are re-elected in subsequent Congresses if their party maintains its majority. The speaker gets a salary of 40,000 dollars a year, as fixed by law. "It

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[1] *Bryce, Modern Democracies*, Vol. II, p. 56.

[2] *The American Government*, p. 316. Cf. *Form and Functions of American Government*. p. 260.

is customary for the Speaker-elect to ask the oldest Member in service to administer the oath to him. Amid loud applause and the waving of handkerchiefs, and to the click of cameras in the galleries, he accepts the gavel from the Clerk, and in a few words thanks the Members and pledges himself to fulfil the duties of the Speaker."[1] Unlike the practice in the British House of Commons the American speaker acts as a party leader and uses his powers as Speaker to promote his party interests and programme. If he likes, the Speaker can express his own views on any motion, or vote on any measure if he chooses. Ordinarily, his duties are to conduct the proceedings and give his rulings on points of order. Then the members are called in alphabetical order to take the oath administered by him. This being over, the minor elective officers are then elected, and then the House is declared as organised.

Formerly, when the membership of the House was comparatively small, each Representative had a seat and a desk whereon to do his correspondence and other work. But now with the increase in membership and due to lack of enough accommodation, as well as to enable the speaker to be distinctly heard, desks have been removed. In former days, the Speaker enjoyed very great powers, including the appointment of committees, so much so that he was even called 'Czar' or 'Autocrat,' but with the election of Speaker Cannon (1896—1911), the House determined to stop this autocracy. Mr. Cannon used to say that "the Speaker was the creature of the House, and that it could put him out of his position any hour it chose to do so."[2]

Committees in the House. Due to the large membership of the House, the Committee System has been adopted. There are as many as 19 standing committees elected by the House itself, consisting of the majority and minority party members. Only half a dozen of these committees are important, the most influential of them being the Rules Committee, the Appropriation Committee and the Ways and Means Committee. The Rules Committee has virtual power of life and death over a Bill. All Bills are referred to this Committee before being considered by the House, and only those of them are considered by the House which have been reported by the Committee. This gives the Committee a great power. The Appropriation Committee has complete power over the budget proposals put forward by the Administration and the Ways and Means Committee suggests the taxes for

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[1] *Ibid.* p. 307.

[2] *The American Government*, p. 308.

raising the required funds. These two then can, if they so desire (and they often do it) frustrate the schemes, or force changes in the policies, of the administration. The meetings of the minor committees are seldom held. The relative importance of the Committees, however, depends upon the kind of legislation before the House, each committee acquiring importance wherever a bill or resolution concerning its subject is under discussion.

Legislative procedure. Every new bill after its first formal reading is referred to the committee concerned for report. The committee then proceeds to examine or amend it. When it has reported, the bill is put on one of the five calendars, *viz*., the 'Union Calendar composed of the Committee of the Whole House on the State of the Union, dealing with bills concerning taxation and appropriation favourably reported; 'House Calendar' dealing with public bills, not included in the former; the 'Calendar of the Committee of the Whole House,' dealing with all private bills; the fourth calendar contains measures introduced by unanimous consent: the fifth calendar deals with instructions given to Committees. The second reading then begins when members move amendments and advance their respective arguments for and against. Every member is entitled to speak once and that for not more than one hour on a particular measure. It is when a session of Congress comes to a close that one of the most interesting scenes of congressional activity is enacted. For several days before there is usually a great rush of business with perhaps an all-night filibuster at the end. An all-night session is a strenuous affair and frequently the House is without a quorum. Then the members try to keep awake "by singing, smoking, telling jokes, and quarrelling—in fact, doing everything else but legislating."[1] After the third reading is over, the Speaker puts the measure to vote. There are three methods of voting, *viz* ,

(1) By "sound of voices," and this is generally adopted unless one of the other two is demanded;

(2) By tellers, wherein the members pass between tellers appointed by the Speaker, (this method may be demanded by one-fifth of the quorum): and lastly;

(3) By yeas and nays, demanded by one-fifth of the members present, involving actual roll call and consequent loss of time. This method is frequently used by the minority as a way of putting obstruc-

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[1] *Ibid.* p. 314.

tion.

Conflict between the Houses. After a measure is passed by the House, it goes to the Senate. If the Senate rejects it, it is finished. But if the Senate amends it, it is referred back to the House. In case the House rejects these amendments the disagreement notice is sent to the Senate which may demand a conference of an equal number of 'managers' appointed by the two chambers to arrive at a compromise. After a bill has thus been finally agreed upon, it is signed by the Speaker and the President of the Senate and is then transmitted to the President of the U. S. A.

President's signature. If the President approves it, he signs it and it then becomes law, but in case he disapproves it, he sends it back, with his objections, to the house in which it had originated. If this returned measure is voted again by each of the two chambers, separately, by a two-thirds majority, it becomes law despite the President's disapproval. If the President fails to sign it or return it with his objections within ten days, it automatically becomes a law. But the measures which reach the President during the last ten days of a congressional session can become law only when signed by him; thus the President enjoys a 'pocket veto' with regard to these measures. The veto power of the President is real and has practically been exercised by every President. Comparatively speaking, the Congress has not been equally effective in over-riding the President's veto. A few examples will illustrate this:

President with years of term	*Regular Vetoes*	*Pocket Vetoes*	*Over-ridden Vetoes*
Wilson (1913-21)	25	9	5
Coolidge (1923-1929)	13	19	3
Roosevelt (1933-1944)	369	260	9
Truman (1945-1952)	182	70	12

Roosevelt and Truman had large majorities in the Congress and therefore most successfully applied vetoes. Every bill that becomes law is deposited in the office of the Secretary of State.

The House has the sole right to originate all bills for revenues, although the Senate can propose amendments. Legislative powers of the two chambers are equal, except that revenue bills originate in the House but the Senate, unlike the House of Lords in England, can completely amend money bills retaining only their title. It has also the

sole right to elect the President of the U. S. A. in case no candidate obtains the requisite majority before the last date for the Presidential election.

Upper Chamber. *The Senate* is the upper chamber of the American Federal Legislature. It represents the States as such, and recognises their equality of status because each State, small or large, sends two representatives (Senators, as they are called) to the Senate. When the constitution was being framed, the supporters of the rights of States had insisted upon this equality and it was in 'a spirit of amity, and the value of 'mutual defence and concession' that their demand was accepted. The authors of *The Federalist* rightly remark that "the equal vote allowed to each State is at once a constitutional recognition of the portion of the sovereignty remaining in the individual States and an instrument for preserving that residuary sovereignty."[1] They further remark that this also provides "additional impediment" against improper legislation although they admit "this complicated check on legislation may in some instances be injurious as well as beneficial." Originally it was provided that the Senators would be elected by the respective legislature of the States, but the Seventeenth Amendment (1913) now provides that the Senators should be elected by the people of each State. Temporary vacancies may be filled by the State executive until people fill them by direct elections.

Qualifications of Senators. The qualifications of a Senator are that he must be at least thirty years of age and must have been a citizen of the United States for nine years, and when elected, a resident of the State he is to represent. All the voters to the most numerous branch of the state Legislature are also voters for the Senatorial election.

Privileges of Senators. Originally, when there were only thirteen States, the number of Senators was 26, but with the increase in the number of States, the strength of the Senate correspondingly increased till it has reached the figure of 98 for the 49 States that now compose the United States of America. The term of the Senators is six years, one-third of the Senators retiring after every two years, so that the Senate never dies. The salary of a Senator is the same as that of a Representative, *viz.*, 12,500 dollars plus 2,500 dollars for clerk allowance, per year. The Senators enjoy the privileges of freedom from arrest and freedom of speech in the same manner as the Representa-

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[1] *The Federalist*, No. LXII.

tives. They "are prohibited from practising before the executive departments for monetary consideration, and they cannot be appointed to any civil office under the United States which shall have been created, or of which the emoluments shall have been increased during the term for which they were elected."[1] In case a Senator accepts a post the salary of which has been increased during his term, he is forced to work at the smaller salary.

Presiding officer. The Vice-President of the United States, who like the President is elected indirectly by the people, is the presiding officer of the Senate in which capacity he gets an annual salary of 40,000 dollars. He has, however, no other power in the Senate except that of casting a vote in case of a tie. There is a President Pro Tempore, elected by the Senators from among themselves, who presides over the Senate in the absence of the Vice-President; the President Pro Tempore assumes the place of the Presiding officer of the Senate getting the emoluments due to the Vice-President. The Vice-President administers oath to the newly elected senators. As only one new senator can be elected from one State at one time, his older colleague conducts him to the desk of the Vice-President. "Occasionally, however, the incoming senator and the continuing senator are bitter enemies, personal as well as political, and refuse to exchange courtesies".[2]

Powers of the Senate. The Senate has very extensive powers larger than those enjoyed by the House of Representatives. These powers are legislative, executive and judicial. As a legislative chamber it has the same powers as the House of Representatives, except that a revenue bill must originate in the House. In the executive field, its concurrence by two-thirds majority is necessary for concluding treaties negotiated by the President. The most important treaties which the Senate ratified and which attracted world-wide attention were those resulting from the Conference of the Limitation of Armament, and the Four Power Pact. The Senate rejected the proposal of President Wilson to allow the United States of America to accept membership of the League of Nations and in that particular case it asserted its executive power against the President. The Senate's assent is also necessary to the nominations of Federal officers made by the President.

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[1] *The American Government*, p. 321.
Alaska was admitted as the 49th state on July 7, 1958.

[2] *Ibid.* p. 326.

strictly specifies the powers of the Congress, but the concluding para 18 of section 8 of Article 1,[1] leaves the judges a very wide field of interpretation whereby they are at liberty to decide whether any power claimed by the Congress is really "necessary and proper for carrying into execution the foregoing powers."

Doctrine of Implied Powers. Thus they have, in the actual work of interpreting these words propounded the *Doctrine of Implied Powers*, whereby the powers of the federal government in the United States of America have been very largely increased. Mr. Justice Taney thus spoke of this special function of the Supreme Court: "If in this Court we are at liberty to give old words new meanings when we find them in the Constitution there is no power which may not by this mode of construction be conferred on the federal government and denied to the states."[2] This doctrine was, for the first time, enunciated by Marshall in the famous case *Mc Culloch* versus *Maryland* in 1819. When Hamilton was secretary of the Treasury, a National Bank was chartered in 1791 for a term of 20 years. A second Bank was chartered by Congress in 1816 and a branch of this bank was opened in the state of Maryland. In February 1818 the state of Maryland passed a law laying a heavy stamp tax on all notes issued by banks chartered outside the state. Three months later an informer sued James Mc Culloch, the cashier of the National Bank, for having put into circulation an unstamped banknote in violation of the state law. The Maryland Court convicted Mc Culloch for violation of the state law, whereupon he preferred appeal in the Supreme Court presided over by Chief Justice Marshall. The point at issue was whether Congress had the power to charter a bank. Maryland contended that the national government had only delegated powers which did not include the power to charter a bank. Marshall, in delivering the unanimous verdict of the Court, refuted this contention. He said, "The Government of the Union, though limited in powers, is supreme within its sphere of action." Admitting that the enumerated powers of Congress do not mention chartering of a bank, he considered this power as implied in the power to make "all laws which shall be necessary and proper for carrying into execution the foregoing powers." And a bank being necessary for raising loans, issuing money and regulating the price thereof and regulating inter-statal commerce, it was a

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[1] Already quoted earlier in this chapter.

[2] Quoted by Smellie in *The American Federal System*, p. 114.

"necessary" and "proper" power. He laid down the principle that a State had no power to tax the instrumentalities of the Federal Government; which are implied in delegated powers. Thus the state law taxing the National Bank was invalidated.

The greatest credit for propounding the *Doctrine of Implied Powers* and thus strengthening the powers of the federal government belongs to Chief Justice Marshall who occupied the Bench for a very long time, and who "was a product of the same times as the Constitution itself and so he knew the intent of the framers. When close questions arose he was able to determine how the hairs should be split for the good of the country, and in the opinion of some of his contemporaries, strained the precise letter of the great charter in some of his decisions."[1] And even now lawyers in the U. S. A. regard his decisions "almost as sacred as the clauses of the Constitution itself, because both pointed in the same direction, that of the solidarity and permanence of the nation."[2]

Finer has aptly remarked: "Such a court, with such functions, is the most original, the most distinctively American contribution to political science to be found in the Constitution. It is even more. It is a cement which has fixed firm the whole Federal structure."[3]

Another writer, F. J. Haskin, too speaks of this court in a similar tone. He says: "This great tribunal is a balance wheel in the governmental machine. It maintains its judicial poise while other departments of Government are swayed by fluctuating gusts of popular opinion. Its duty, at all times and in all circumstances, is to uphold the Constitution as the supreme law of the land, and the exercise of this power is essential to the welfare of all the people."[4]

Composition of Supreme Court. The judges are appointed by the President with the approval of the senate. No qualifications are prescribed for judgeship, but the President appoints only those who are well known for their knowledge of law. Judges are appointed for life and may be removed only by impeachment. They are, therefore, very secure in their office and independent in their duties. Though most of the appointments are guided by political motives, the judges once appointed have exhibited independence and on many occasions

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[1] *The American Government*, p. 287.
[2] *Ibid.* p. 287.
[3] *Theory and Practice of Modern Government*, vol. I. p. 309,
[4] *The American Government*, p. 296.

delivered judgments not liked by the appointing Presidents. The Supreme Court consists of one Chief Justice with a salary of 25,500 dollars, and eight associate judges, each with a salary of 25,000 dollars. The Chief Justice is the executive officer of the Court, and presides at all sessions and conferences. The associate judges have precedence according to the date of appointment. Each of these nine Justices besides doing the judicial work in the Supreme Court, is the president, or really speaking supervisor, of one of the ten circuit courts that have been created by the Congress and cover the whole of the U. S. A. territory which is divided into ten circuits. The judges of the Supreme Court may, if they so desire, retire on reaching the age of 70, if they have, till then, served for ten years. All the nine judges sit together to hear cases, the Chief Justice in the centre and the associate judges on either side in the order of seniority. Once it so happened that this seating arrangement resulted in bachelor judges sitting on one side of the Chief Justice and married judges on the other. Tuesdays, Wednesdays, Thursdays and Fridays are the four days on which cases are heard; Saturdays are set apart for conference of the judges who then discuss the cases and after that divide them between themselves for writing out judgements, the decisions having been arrived at by a majority vote or unanimity. Then on Mondays the judgments are publicly delivered in the Court.

The Court holds its sessions generally from October to June. "There is perhaps no other body in the world which conducts its business in a more impressive way than the Supreme Court."[1] Great punctuality and rigid silence are the distinguishing features of its sessions which are open to visitors.

Circuit Courts. The Supreme Court has "inferior federal courts" created by the Congress. The Circuit Courts of Appeal were first created in 1891 to facilitate the disposal of cases. There are ten circuit courts, each under the direct supervision of one of the judges of the Supreme Court, and having three to nine judges each with a salary of 17,500 dollars (holding office during good behaviour), and a district judge of the district in which the court is held, but the district judge from whose decision appeal is sought before the circuit court is ineligible. The decisions of these courts in all cases, not involving questions of constitutionality, are final. But decisions may

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[1] F. J. Haskin, *The American Government*, p. 292.

be reviewed by the Supreme Court.

District Courts. Then again at the bottom of the judicial ladder are the 85 district courts, each with one or more district judges whose salary is 15,000 dollars. The district judges hold office during good behaviour. Each State has at least one district court, and some states have more, but no "district" can include territories of two or more States. With the exception of very few cases in which the Supreme Court has original jurisdictton, all general cases begin in the district courts from which appeal lies to the circuit court concerned and then finally to the Supreme Court. In criminal cases where death is the penalty, appeal lies from the district court directly to the Supreme Court. So also in cases involving validity of an Act of Congress, appeal lies from the district Court to the Supreme Court.

Other courts. There are also seven more courts, three of which, i.e., the Court of Claims, the Custom court and the Court of Customs and Patent Appeals are important and deal respectively with the claims against the Government and cases involving statutes relating to the customs, but these have nothing to do with general cases. We, therefore, see that there are two categories of Courts in the United States: (1) Constitutional courts comprising of the Supreme Court, Circuit Courts of Appeal and District Courts, and (2) the Legislative Courts, comprising of besides the Court of Claims, the Customs Court and the Court of Patent Appeals, and four more namely, Territorial Courts, Tax Court, Court of Military Appeals, and the Emergency Court of Appeals.

Prior to 1911, there were nearly 9,000 sections in the statutes relating to the laws regarding the work and procedure of the judiciary, but in that year all these were sifted, examined, their inconsistencies removed and then finally put into a brief but clear form.

Amendment of the Constitution

There are two stages involved in the process of amendment of the constitution, *viz.*, proposal and ratification.

The amendments to the constitution may be proposed, in accordance with the terms of Article V, in one of the following two ways:

(*i*) The Congress may itself propose amendment to the constitution, provided two-thirds of both Houses, voting separately, may deem it necessary and,

(*ii*) Legislatures of two-thirds of the States may apply to the

Congress, when the latter should call a convention for proposing amendments.

But in each of the above two cases, an amendment becomes valid and effective only when it has been ratified by either the legislatures of three-fourths of the States, or by conventions, called for the purpose in three-fourths of the States, whichever method be prescribed by the Congress.

This process of amendment means that both general government and the States have a voice in amending the constitution. The amending process in the U.S.A. is undoubtedly very rigid. So far, between the years 1789 and 1958, only twenty-two amendments have been made though nearly 1900 amendatory resolutions had been proposed, most of which were rejected on account of being valueless.[1] The twenty-two amendments may be classified into three groups, the first group includes those relating to rights of citizens (a Bill of Rights having been omitted in the original constitution), and they are the first nine amendments made in 1791, and the tenth, eleventh and twelfth amendments made in 1791, 1798 and 1804 respectively. The second group includes the thirteenth amendment (1865) prohibiting slavery, the fourteenth (1868) and the fifteenth (1870) securing equal rights of citizenship in all states, and all these "register the principal constitutional results of the Civil War." The third and the last group includes the remaining eight amendments which, respectively, empower the Congress to lay and collect direct taxes (1913), make the election of Senators direct and popular and otherwise indicate the composition of the Senate (1913), prohibit the manufacture, sale and importation of intoxicating liquours (within the U.S.A. territory) illegal (1919), secure right of voting to women (1929), abolish the prohibition (imposed in 1919 on liquors (1933), lay down the dates of expiry of the terms of the President and the House of Representatives etc. (1933), and restrict the choice of a President for only two terms (1951).

The process of amendment of the U.S.A. constitution is such that even one man can make it impossible to enforce an amendment. For example, if in the Senate out of the 98 Senators only 85 are present of whom 56 vote for an amendment, already voted for by two-thirds of the House of Representatives, and only 29 Senators vote against it, the amendment fails to pass.

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[1] *Theory and Practice of Modern Government*, vol. I. p. 195.

Political Parties in the United States

The political parties in the United States of America essentially differ in their aims and character from those in England and most other countries. Before giving the reasons for this difference we first take up a brief history of these parties.

Originally in the U. S. A. there was the party of the well-to-do and aristocratic class which stuck loyally to the King, and the other party was that of the poorer and more numerous class which preached loyalty to the country as against the King. The successful termination of the War of Independence, put an end to this kind of party classification. At the time of the framing of the constitution of 1787, two strong parties sprang up, *viz.*, the Federalists who generally belonged to the aristocratic class and wanted to make the central government very strong, and the Democrats who stood for preservation of State rights and State sovereignty and who preached liberty, equality and fraternity; and were led by Thomas Jefferson. Soon the Federalists who were led by Hamilton became stronger on account of the support given to them by George Washington.

Later on, the basis of party system underwent a little change and in 1850 two parties, the Republicans (the former Federalists) and the Democrats were sharply divided. Curiously enough, the Democrats favoured slavery and confined their principle of liberty, equality and fraternity only to the white population. They were generally cotton growers and agriculturists of the Southern States. The Republicans predominated in the Northern States. The Democrats accepted Calhoun's theory of secession of States and opposed the slave emancipation policy of Abraham Lincoln. The end of the Civil War (1861), and the consequent amendments in the constitution put a stop to the slavery question which had till then divided the Republicans and the Democrats.

At present the two important parties are the Republicans and the Democrats, the former favouring a strong central government. It must, however, be observed here that there is not much to divide political parties in America. Firstly, the constitution is so distinct regarding the allocation of powers to the State and federal governments that there is now little for the political parties to stand for in the matter of political programme. The constitution being rigid and the process of amendment being very difficult, no political party can profitably be formed on that basis. Secondly, in the United States

of America the economic, cultural and geographical features reduce the chances of raising important political issues. There is hardly a poor starving class, all capital, 'agricultural, industrial and commercial,' is very widely diffused. "The bulk of the nation is middle class."[1] The other world powers, European or Japan, being very far from the U.S.A., the Americans have little to fear from foreigners and hence there is no division of parties regarding foreign policy. There is a tremendous field for industrial and commercial enterprise to be exploited in that continent and the majority of the people are engaged in it. Most of the people are Non-Conformists and have no sharp cultural differences.[2] Lastly, the principle of separation of powers has further reduced the field of political controversy.

So that, however paradoxical it may seem, the objects of difference in the aims of the American political parties being very few, we may say that "*America has only one party, of the Republican-cum-Democratic, divided into two nearly equal halves by habits, the contest for office, the Republican being one half and the Democratic the other half of the party.*"[3] In actual practice the Republicans have generally held the powers in elections to the Congress or to the office of President. The Democrats have been successful only for brief period in the history of that Republic. Dr. Herman Finer thus describes the real work of parties and the absence of real differences: "It is a remarkable fact that most of the comprehensive studies of American Political Parties insist on their importance because they organise the voters and put forward candidates. The criterion of a programme and the pursuit of an ideal are relegated to the background."[4] Recently, the world economic depression and the rise of socialism have brought into existence some sharp economic differences between the political parties and led to the formation of a new Socialist Party, which is, however, still in infancy and, therefore, of no great importance. And although this and other minor political parties may continue to exist, without, of course, exercising any profound influence on American elections and politics, the two-party system—the Republicans and Democrats—appears to hold its sway for a considerable time in the future.

The two major parties are, however, well-organised and fight elec-

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[1] *Theory and Practice of Modern Government*, p. 542.

[2] *Ibid.* pp. 540-544.

[3] *Ibid.* p. 539.

[4] *Op. cit.*

tions vigorously for state and federal legislatures, and for the offices of state governors and Presidency and Vice-Presidency. In local bodies elections, non-partisanship is being favoured. The two-party system is, however, being supported by those who would like to see a cabinet system taking the place of the presidential system, so that the opposition party may appear as the critic of the party in power; "developing, defining and presenting the policy alternatives which are necessary for a time choice in reaching public decisions."[1]

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[1] *Problems of American Government,* p. 154.

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GOVERNMENTS OF THE STATES IN THE U. S. A.

The State Constitutions are the oldest things in the political history of America, for they are the continuations and representatives of the royal colonial charters, whereby the earliest English settlements in America were created, and under which their several local governments were established, subject to the authority of the English Crown and ultimately of the British Parliament.

—JAMES BRYCE

Growth of the States. Originally, in 1787, there were only thirteen States that composed the United States of America. There were the former colonies that had thrown off their allegiance to the British King and won the War of Independence. Later, the vast expansion of territory to the west, by colonisation, conquest or secession, led to the formation of more States and their admission to the federal republic, under section (3)• para 1 of Article III of the Constitution of 1787, which provided for the creation of new States, subject to the condition that the territories of no States would be thus affected "without the consent of the Legislature of the States concerned, as well as of the Congress." At present there are forty-nine States that form the United States of America as a federation. They are governed by authorities set up under their respective constitutions which are written ones, independent of the national constitution but based more or less on the same principles of government, largely borrowed from England.

Essential facts about States. The States differ widely in the extent of their territories, population, geographical and economic factors, etc. The area, population and year of admission of each State including Alaska, the 49th State, into the federation are given in the following table:

Name of State with year of formation.	Land area in sq. miles in 1950	Estimated Population 1 April, 1950
Alabama (1819)	51,078	3,061,743
Alaska (1958)	571,065	128,645
Arizona (1912)	113,575	749,587
Arkansas (1836)	52,675	1,909,511
California (1850)	156,740	10,588,223
Colorado (1876)	103,922	1,325,089
Connecticut (1788)	4,899	2,007,280
Delaware (1787)	1,978	318,085
Florida (1845)	54,262	2,771,305
Georgia (1788)	58,483	3,444,578
Idaho (1890)	82,769	588,837
Illinois (1818)	55,935	8,712,176
Indiana (1816)	36,205	2,914,224
Iowa (1846)	56,045	2,621,073
Kansas (1861)	82,108	1,905,299
Kentucky (1792)	39,864	2,944,806
Louisiana (1812)	45,162	2,683,516
Maine (1820)	31,040	913,774
Maryland (1788)	9,881	2,343,001
Massachussetts (1788)	7,867	4,690,514
Michigan (1837)	57,022	6,371,766
Minnesota (1858)	80,009	2,982,483
Mississippi (1817)	47,248	2,178,914
Missouri (1821)	69,226	3,954,653
Montana (1889)	145,878	591,024
Nebraska (1867)	76,663	1,325,510
Navada (1864)	109,789	160,083
New Hampshire (1788)	9,017	588,242
New Jersey (1787)	7,522	4,835,329
New Mexico (1912)	121,511	681,187
New York (1788)	47,944	14,830,192
North Carolina (1789)	49,097	4,061,229
North Dakota (1889)	70,057	619,636
Ohio (1803)	41,000	7,946,627
Oklahoma (1907)	69,031	2,233,351
Oregon (1859)	96,315	1,521,341
Pennsylvania (1787)	45,045	10,498,012
Rhode Island (1790)	1,058	791,896
South California (1788)	30,305	2,117,027
South Dakota (1889)	76,536	652,740
Tennessee (1796)	41,797	2,291,718
Texas (1845)	263,513	711,194
Utah (1896)	82,346	688,862
Vermont (1791)	9,278	377,747
Virginia (1788)	39,893	3,318,680
Washington (1889)	66,786	2,378,963
West Virginia (1863)	24,080	2,005,553
Wisconsin (1848)	54,705	3,434,575
Wyoming (1890)	97,606	290,529

Independent State constitutions. The federal constitution of the U. S. A. relates merely to the machinery and powers of the central

government and does not contain even the principles of the State constitutions. It was formed largely on the model, in certain essential aspects, of the constitutions of the thirteen original States that were parties to the federal compact of 1787. Thus the constitutions of all the States are instruments of government independent of the federal constitution, and derive their authority from the peoples of the States respectively. In the Commonwealth of Australia and the Swiss confederation, the constitutions of the part-states are not contained in the federal constitution, and are, in this respect, as important and independent as those of the American States. On the other hand, in Canada, the Union of South Africa, and the U. S. S. R. the federal and state constitutions form a single piece, *i.e.*, one constitution. In the new Indian Republic, the constitutions of the Federal and State governments, are parts of a single document, whereas the constitutions of the federating unions of viable Indian states were to be separate pieces of governmental documents. The American State constitutions, preceded the federal constitution and formed the basis of the latter.

Forty-nine State constitutions. Each of the forty-nine States in the U.S.A. has its own constitution. Therefore, there are forty-nine different State constitutions which one has to study in order to learn the systems of government prevailing in the States. But the similarities between them are so great that a study of the general features of these constitutions suffices for an intelligent understanding of the governmental systems of the States, for, as Bryce points out, "They are all copies, some immediate, some mediate, of ancient English institutions, *viz.*, chartered self-governing corporations which, under the influence of English habits, and with the precedent of the English parliamentary system before their eyes, developed into governments resembling that of England in the eighteenth century." When the thirteen colonies became independent States, they retained the essential features of their original constitutions and made only such changes as were warranted by their new legal, constitutional and international status.

New States adopted the old models. When new States were admitted to the Union, each adopted the general scheme of the constitutions of the original thirteen commonwealths. [1] "They were the more inclined to do so because they found in the older constitutions that sharp separation of the executive, legislative, and judicial powers which the political philosophy of those days taught them to regard as

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[1] Bryce, *American Commonwealth*, vol. I. p. 478.

essential to a free government and they had all taken this separation as their point of departure."

General features of State constitutions. Apart from the principle of separation of powers which forms the general basis of the State constitutions, there are other general features common to these constitutions. In each State, the constitution is derived from the people who retain under their final control the election of the head of the executive, called the governor, and the amendment of the constitution, and the three methods of direct democracy, *viz.*, referendum, initiative and recall. In each there is an elected head (governor), a number of administrative officers, a bicameral legislature, an independent judiciary, and various subordinate local-self-governing bodies, like countries, cities, townships, villages, and school districts, which mark out the U. S. A. as a highly democratic country.

The State Legislature

Bicameralism is the general rule. The most important part of the State governmental machinery is the State legislature. In practically every State there is a bicameral legislature, the lower house usually called the House of Representatives, and the upper, the Senate. The only exception to this bicameralism is the State of Nebraska which adopted a constitutional amendment in November, 1934, and established a single-chambered legislature of 43 members. Bicameralism in the American States was generally an adaptation from the national constitution. The former arguments of having an upper house to prevent hasty legislation no longer avails in modern times because of the influence of the press, the long process of the legislation, involving three readings system, the governor's power of veto, and the existence of the direct legislation by the people.

How elected. The two chambers, the Senate and the House of Representatives of a State legislature are popularly elected bodies, all citizens exercising the right of vote to both. To avoid duplication of representation, however, and justify the existence of two chambers, the constituencies for the election of the chambers are differently arranged. The Senate consists of representatives elected by the counties, all of which have equal representation irrespective of their population. The lower house is elected by electoral districts having representation in proportion to population. It may, therefore, be said, with some amount of truth, that the Senate is geographically

elected while the House of Representatives is elected on population quota. The House has generally become more rural while the Senate, on account of the rapid rise in the population of cities, has become more urban. As the strength of the House is larger than that of the Senate, the former is a more popular chamber than the latter.

Term of the legislature. The terms of the two chambers of a State legislature differ from State to State. As a rule, the Senate has a longer term than the House; the former is partially renewable at intervals while the latter is elected completely after stated periods. In many States higher age qualifications are prescribed for Senators than for Representatives.

Working of legislature. In all the States the members of the legislature receive the same salary and emoluments which are fixed on yearly, or monthly or sessional basis. In most of the States (38 at present) the sessions of the legislature are held biennially; in the remaining 11 annual sessions are held. Members enjoy the usual privileges and freedom of speech. Each chamber has its own presiding officer and a number of other officials, elected by itself, and it controls its own procedure. A bill may originate in either house, but a money bill originates in the lower house while the senate has a right to amend it. A measure is said to have been passed by a chamber when it has gone through the three prescribed readings. It is then sent to the other chamber. If the latter accepts it, it becomes law on receiving the governor's signature. In case of disagreement between the two chambers, the measure fails. A governor may return a measure, passed by both the chambers, with his objection, and if the measure is repassed by two chambers by the prescribed majorities in each (these differ from State to State), it becomes law despite the governor's objection.

Constitutional Amendments. All State constitutions are like the national constitution, based on the principle of separation of powers. They are amendable by the State legislature, but a measure that seeks to amend the constitution requires, generally speaking, a higher number of votes in the legislature than a bare majority. In some States, majorities ranging from three-fifths of a quorum to two-thirds of the whole strength of a chamber are necessary. But all amendments to be effective must be accepted by the people at a referendum. Thus referendum in the American States is obligatory for all constitutional amendments. No State can, however, alter its constitution so as to militate against the national constitution which

is the supreme law of the land.

Powers of State legislatures. The federal government possesses only specified powers, and the federal constitution does not define the powers of the States. It only says that a power not definitely given to the federal government nor denied to the State governments belongs to the latter. Thus it may be said that the American States exercise all residuary powers, or, in other words, all powers except those that have been clearly given to the national government. The tendency of late has been that on account of increasing internationalism, the complex commercial relations between nations and the desire of some nations to extend their influence, the States are becoming more and more dependent on the national government for making available larger opportunities of a better life to their citizens. Naturally, therefore, the States are slowly losing a part of their independence and powers which they had so jealously guarded at the earlier stages of the union.

The State Executive

The American States are small republics, and the republican character of their constitutions cannot be altered. The chief executive power, in each State, is, therefore, vested in a popularly elected governor. The executive department is independent of the legislature and consists of, besides the governor, a lieutenant-governor, a secretary of state, a treasurer, an attorney-general, an auditor, a superintendent of education, and a number of other minor officers.

The Governor. The governor is the executive head of a State government. The office is very old, continuing, by tradition, since the very early days of the American colonies, about three hundred years back. A state governor is a popularly elected executive head. Only citizens of the State are eligible to the office. Candidates for governorship or lieutenant governorship (wherever the latter exists) may be nominated by state-wide primaries or by party conventions consisting of delegates from the different counties. The election is by secret ballot, and ordinarily a plurality of votes is enough to declare a candidate elected. The governor must have been a resident for at least five years, within the State and of at least thirty years of age at the time of election. The term of office of a governor varies in different States. But it is either two or four years. A governor may seek re-election. He gets a salary varying from four thousand five

hundred to twenty-five thousand dollars, in different States. He is liable to impeachment and removal from office when convicted by a tribunal consisting of the justices of the highest State court and the senate of the State, by a two-thirds majority. Only New York, Texas, and Oklahoma each removed a governor by this method during the period 1913-1923. In about a dozen States there is provision for recall of a governor by petitioning the government, and giving specific details demanding such a step. But so far only one governor—governor Frazier of North Dakota—has been so recalled (1921).

Powers of a governor. The State governor exercises powers of various descriptions. In the legislative field, his signature is necessary for the enactment of a law. He can object to a measure passed by the State legislature and require its reconsideration. He may call special sessions of the legislature, for considering only special measures. "Even at regular sessions the governor initiates legislation, promotes it, often pushes it through both chambers by the weight of the official influence." Theodore Roosevelt, once a State governor, remarked, "More than half my work as governor was in the direction of getting needed and important legislation." The governor is a staunch party man and through the members of his party in the legislature, he influences the latter even though he himself is not a member thereof. He exercises some amount of veto power, as explained above, over ordinary legislation. The governor issues executive ordinances to give effect to the general desires and decisions of the legislature. The governor's other powers consist of minor appointments and removals, general supervision of State administration, financial functions, military functions, duties respecting relations with the central government or other States, the granting of pardon, etc. Most of the State officials are appointed by the governor, subject in many cases to confirmation by the State senate. He exercises the general power of granting promotions to members of the State civil service. The State budget is generally prepared under his directions; he is the nominal commander-in-chief of the militia. He may grant absolute or conditional pardon to persons convicted by the State courts.

Other Officers. The other State officers, mentioned above, are elected in most States directly by the people for fixed terms and are, therefore, colleagues, and not servants, of the governor. In this respect, the members of the governor's cabinet, to use a popular term, are more independent than members of the national cabinet who are creatures of the President, appointed, and removable by him at his

own will. The State governor neither appoints the State cabinet members nor can he remove them. The governors can be removed ordinarily by impeachment "to which the governor is equally exposed," when they are "charged with official crimes and misdemeanours by the house of representatives, and tried, convicted, and removed by the senate of the State".[1] They are all answerable, like ordinary citizens, to the State courts. They are elected by the State citizens for the same term as the governor. And "all state officers alike, serve, not other officers, but the people, who elect them; upon the people they are dependent, not upon each other; they constitute no hierarchy, but stand upon a perfect equality".[2]

The State Judiciary

State judicial system analogous to federal judicial system. Every State has its own independent judicial system established under the State constitution. The State courts are not subordinate or inferior to the federal courts, but form a separate judiciary by themselves, possessing full jurisdiction within their spheres. In regard to their general organisation there are many similarities between the federal and State judicial systems. There is, in each State, a hierarchy of courts of different powers and functions. Each State has, usually, three grades of courts, but some of them have more. There are the *Justices of the Peace* having jurisdiction over petty "police offences" and civil suits for trifling sums; there are the *County* or *Municipal Courts*, to hear appeals from the decisions of the lower courts, and with original jurisdiction in a little higher cases; there are then the *Superior Courts* to hear appeals from the decisions of County Courts and having original jurisdiction in still higher cases; lastly, there is the State *Supreme Court*, exercising, in almost all States, only appellate jurisdiction in all classes of cases. No appeal lies from the State Supreme Court to the Federal Supreme Court in matters of state law.

In two important matters the State courts differ from the federal courts. Firstly, in the States the courts are presided over by the Justice of the Peace or judges elected directly by the people, whereas in all federal courts judges are appointed by the Executive. There are only ten States out of forty-nine, in which the judges are not elected.

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[1] Wilson, *The State*, (1900 Edition), p. 199.

[2] *Ibid.*

Secondly, each State has its own routine of procedure which prevents uniformity of system in all States.

In all States judges may be removed on impeachment before, and conviction by the senate, on charges framed by the lower chamber.

Removal of judges. In twelve States, a judge may be removed by a resolution of the legislature, and in nine States by the governor at the request of the legislature. In some of the States judges may be recalled by the people, for which purpose direct vote on a petition for removal is taken. In such States even some judicial decisions are allowed to be recalled. These things are justified on the ground of complete democratisation of the governmental system, but such interference by the people definitely leads to corruption of the judiciary, miscarriage of justice and instability in the judicial system.

Local Government

Different local bodies: their functions. The United States of America being essentially a very democratic country, all States have "local bodies directly elected by the people, and entrusted with the work of local self-government," like 'police, sanitation, care of the poor, the support and administration of schools, the construction and maintenance of roads and bridges, the licensing of trades, the assessment and collection of taxes, besides the administration of justice in the lower grades, the maintenance of court houses and jails, and every other affair that makes for the peace, convenience, comfort and local good government of the various and differing communities of each commonwealth. All States have these elements of local bodies: the Township, the County, the School District, the Town and the City, with different jurisdictions. All these local bodies derive their powers from State governments.

Their officials. They have their own sets of officials, and exercise very limited powers of taxation. Most of these local bodies have merely executive officers and boards moving within prescribed limits. Those that have also legislative bodies are guided by rules very much resembling those of state legislatures. A municipality is a legal entity established under a charter granted by the state government, which specifies the functions and powers of the municipality. Each local government body has its own functions. There is no uniform system of local government in all the States. There is no *Local Government*

Board in the State to exercise any 'discretionary powers of restriction or permission' as is seen in India. The local government undoubtedly forms "the most vital part" of the system of government in that country.

Direct Democracy

Initiative. Direct democracy in the U. S. A. exists only in the States and not at the centre, while in Switzerland it exists in both places. From the very early days of the American republic, the people in the States have been allowed a direct voice in amending of the constitutions. But in addition to this system of Referendum, most of the States in America have also adopted Initiative, a method whereby private citizens are allowed "to prepare and propose to the people, without the intervention of the legislature, a bill or an amendment to the State Constitution."

Referendum. Referendum enables "a prescribed number of private citizens to demand that an Act passed by the legislature shall be submitted to the people for its approval and rejection." As the practice prevails at present in America, 5 to 15 per cent. of the citizens —the different States having different percentages within the range— may submit an Initiative proposal; and 5 to 10 per cent. citizens may demand Referendum.

Why the demand for them? As Bryce puts it, the following are the reasons of the demand for direct popular legislation:

"(*i*) Distrust of the State Legislatures as not correctly representing the people and failing to pass the legislation they need; (*ii*) Suspicion of the power of rich persons and corporations who influence the legislators and officials to pass legislation which may favour only the well to do class; (*iii*) A desire to retain in the hands of the people the power to enact legislative measures which can more easily be passed by a popular vote than by a legislature; (*iv*) A faith in the wisdom, righteousness and sanctity of the whole 'People' as opposed to a distrust in the narrow, at least limited, wisdom of the few."

Both these methods of direct popular legislative Initiative and Referendum, are used for ordinary legislation as well as for constitutional amendments.

Evils of the system. In actual practice, the system has not proved an unmixed good. In many cases, it has led to the enactment of laws that are faulty and the rejection of those laws that are useful.

The method enables the legislators to feel less responsibilities for their action inside the legislatures. People have not shown the same amount of care and wisdom in direct legislation as they have done in electing their representatives to the legislature. And it is true that an average citizen is likely to distinguish between two or more candidates better than to fully realise as to which of the bills before him are for the real and ultimate good of the country, for the complexities of laws are too great for him to realise.

Recall. America has a third method of giving a direct voice to the citizens in the government of the country. And that is the Recall, which means calling back by direct popular vote any official or representative who is not acceptable to the people. So far as administrative officials and legislators are concerned, not much harm is done by giving the people the power to recall them. In many cases, the practice may keep these officials very careful and vigilant in performing their duties and the legislators in correctly representing the will of their constituents. But in several States even judges are allowed to be recalled by the people. Some bold advocates of Recall have even proposed that this device of Recall be applied to Federal Courts as well, but so far their attempts have failed to materialise. Recall of judges undoubtedly weakens the judicial system and even perverts it. No judiciary can perform its duties impartially and justly unless the judges are secure in their office and emoluments. While Referendum and Initiative strike a blow at representative government, the system of Recall weakens the administration. But in a country like America, where even judges and high officials are appointed by popular election, Recall indicates that the average citizens are not really fit for choosing those officials.

Select Readings

The same books as given at the end of the previous chapter contain enough material dealing with governments of States. In addition, Statesman's Year Book (latest edition) may be merely consulted about each State.

Jurists may sob over the 'vanishing rights of the state,' but it is a fair guess that these rights will continue to dwindle as our problems keep growing in size. The steady erosion of state powers is bound to go hand in hand with the increasing perplexity of our economic and social life. Nothing in the realm of political philosophy can be more certain than that the intrepid rear guards of the state-rights army are fighting a lost cause.

—W. B. MUNRO

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Constitutions may result from a conquest or may be maintained for a time by arms; but if they are obliged to rely on and have constant recourse to physical force in order to prevent their overthrow, they are considered as Constitutions, failures; because the very nature and object of a Constitutional Frame of Government is to express and so to readjust to existing conditions the wishes and aims of the citizens as to make the majority, and if possible the vast majority, of the people to support it.

—VISCOUNT BRYCE

19

THE GOVERNMENT OF SWITZERLAND

All Switzerland is, so to speak, only one large town, whose wide and long streets, more so than that of Saint Antione, are sown with forests, divided by mountains, and whose rare and isolated houses are joined only by English gardens.

—ROUSSEAU

History Of The Constitution

The country. Switzerland is a very mountainous country, lying in the heart of south-western Europe with Germany on the north. Austria on the east, Italy on the south, and France on the west. Its greatest length from east to west is 226½ miles, and greatest width from north to south is 137 miles; while the total area is 15,944 sq. miles. The height of the country varies from 646 to 15,000 feet above sea-level. The total population on 1 December, 1950, was 4,714,992. The country is made up of 22 cantons some of which are very large and others small. The chief occupations of the people in the descending order of population, are agriculture, (there being nearly 300,000 small holdings supporting 2 millons, *i. e.*, 53·5 per cent. of the total population), and other pastoral pursuits and manufacturers.

Nature of population. The people of Switzerland are not a homogeneous nation, as they have very great racial, religious and linguistic differences. There are Germans, French and Italians. German language is spoken of by 69 per cent of the people and predominates in nineteen northern cantons, French by 21·1 per cent, generally in the five western cantons, and Italian by 8 per cent. According to religion, the Swiss are divided thus: 58 per cent are Protestants, 40 per cent are Roman Catholics, and the rest follow other faiths. "Religious lines in Switzerland follow the most bizarre directions, due chiefly to complicated historical and geographical causes. Nor do they coincide with the boundaries of the three great

languages".[1] As Bryce remarks: "It is a remarkable series of events, reaching back over more than six hundred years, that has brought men of these three stocks together, and made them not only a united people, but one of the most united, and certainly the most patriotic, among the peoples of Europe".[2] Switzerland contains a very large number of foreign nationals many of whom are fugitives from their native countries, who find this country a safe asylum to escape army service or punishment for political offences.

The geographical diversities of the country, the differences of language and religion, as well as those of race and customs and agricultural pursuits have enabled the Swiss to develop a high sense of democracy. It is for these reasons again, that the country has evolved truly federal institutions. Athens and Switzerland are often quoted as most complete examples of democracy in the ancient and modern world. Switzerland being a small country, the people easily take an active part in the governance of their respective cantons. They are contented. The Government is patriotic, far-sighted, efficient, economical and steady in the pursuit of its policy. Corruption in public life is almost unknown and appointments to offices are made on the sheer basis of merits and not for political purposes. The problem they have to solve is that of self-government among a small, stable and frugal people, and this is easier of solution than the complex problem of self-government in a great, rich and ambitious nation. But the methods the Swiss have followed would undoubtedly produce different results under another set of circumstances.

Five periods of constitutional history. The political history of Switzerland is usually divided into five periods, *viz.*, the old Confederation 1291 to 1798; the Helvetic Republic 1798—1803; the Napoleonic period 1803—1815; the Confederation of 1815—1848; and the modern Federal Period from 1848 up to the present day.

1. Old confederation. It was in the year 1291 that the three forest cantons of Uri, Schwyz, and Unterwalden, situated on the secluded shores of lake Luzern, but not enjoying a similar political status, organised themselves into a 'Perpetual League' to defend themselves and preserve "their rightful status." Those were the days of feudal anarchy, and Duke Leopold of Austria soon advanced to punish these refractory cantons which succeeded in gaining a victory. By 1353

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[1] Brookes, *Government and Politics of Switzerland*, p. 12.

[2] *Modern Democracies*, (1923), Vol. I, p. 368.

the membership of the League reached thirty. This was followed by what Brookes has called an Era of Military power, and during the fifteenth century the cantons went on increasing their territory by acquisitions from neighbouring foreign countries.[1] The Swiss at that time were "democrats at home but not abroad." The religious and racial differences resulted in civil wars, once in 1442-1450, and then again in 1531 and 1721. "Despite all these troubles it is very surprising to find, indeed, that the League withstood all foreign attacks, and Switzerland, which for quite a long time was 'a house divided against itself,' maintained its political entity during the unsettled conditions of that period".[2]

2. The Helvetic Republic. The second period of Swiss political history, the Helvetic Republic, lasted from 1798 to 1803. Switzerland fell a prey to the armies of the French Directory, and the French forced on this unwilling country a constitution after the model of the Constitution of the Year III. The country was divided into twenty-two departments each with its local legislature maintaining its autonomy. A bicameral legislature, consisting of a Senate and a Grand Council, was established for the whole country. Outwardly pretending to establish a republic in Switzerland, the French could not conceal the real object of their occupation. They confiscated the state treasure at Bern and drew a huge sum of money and a large number of soldiers from the cantons to invade other countries. The cantons then rose into revolt, and the French massacred the Swiss without distinction of sex or age. The war between France and Austria at once converted Switzerland into a field of battle.

3. Napoleonic period. Napoleon then sent his trusted general Ney to restore order. The Swiss representatives met at Paris and passed the *Act of Mediation* (1803) with which began the third period of Swiss history. But this Act failed to free Switzerland from French influence, and with the fall of Napoleon in 1813 this period came to an end.

4. Confederation of 1815-48. The celebrated Congress of Vienna re-organised the political map of Europe. The Swiss, though they failed to receive back their lost territories, gained a liberal constitution known as the Pact of 1815, which marked the beginning of the fourth period. All the cantons were recognised as equal in political status, each having one vote in the national Diet. They were given full local

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[1] *Federal Policy*, p. 53.

[2] *Ibid.* p. 54.

autonomy. In July 1830, the Swiss effected important reforms in their constitution.

5. Modern federal period. In the year 1845, Switzerland witnessed the deadliest of civil wars, when the seven Catholic cantons, *viz.*, Luzern, Uri, Sehwyz, Unterwalden, Zug, Freiburg, and Nalais formed a separate league, called the *Bewaffneter Sonderbund* and threatened a secession. The Federal Diet sent its army of 100,000 strong under General Dufour who defeated the 90,000 strong of the rebellious cantons after a fight of nineteen days (November 10-29, 1847), and stopped the secession. The constitution was revised in 1848, to satisfy some of the demands of the Catholic cantons; it was proclaimed on September 12, 1848, after it had been adopted by a vote of 15½ cantons with a population of 1,897,887 to 6½ cantons with a population of 292,371. With this new constitution, which was further revised in 1874 adopted by a vote of 14½ to 7½ cantons, with a population of 340,199 to 198,013, began the fifth period of Swiss history. And this is the period of the modern federation of Switzerland.

The Constitution of 1874

Insufficiency of the constitution of 1848. The constitution of 1848 represented a compromise and therefore it reflected the "growth of the new ideas with an attempt to retain the ancient practices".[1] The powers conferred upon the Federal government were strictly limited. "These powers existed only in Diplomatic and Military affairs, together with certain economic matters, such as posts, customs, and weights and measures in respect of which concerted action could not be neglected if the people were to retain any sort of unity".[2] The actual working of this constitution dictated the necessity of greater centralisation the movement for which "particularly desired to abolish the separate judicial systems of the cantons, to unify and codify the law and to create a permanent Federal Tribunal. It was also desired to nationalise the railways under Federal ownership, and cause legislation to be referred to the entire Swiss people, not as inhabitants of certain Cantons, but as a single and unified Court of Appeal".[3]

Nature of the Constitution of 1874. These much needed changes

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[1] *Select Constitutions of the World*, p. 426.
[2] *Ibid.* p. 427.
[3] *Ibid.* p. 428.

were included in the amended constitution of 1848, which was first passed by the legislature and then finally voted upon by the people. This constitution is nearly half as long again as the constitution of the United States of America. The Swiss constitution delimits "the competence, legislative and administrative, of the federation on the one hand and the Cantons on the other".[1] It stands as a "patient compromise between the advocates of cantonal rights and those of federal rights," hence its prolixity which is tiresome, but because "it anticipates and prevents causes of internal friction and possibly of civil strife, it takes high rank among the political virtues."[2] The framers of the Swiss constitution were not believers in Montesquieu's doctrine; "they did not provide for the separation of powers with an elaborate system of checks and balances in the government which they created".[3] In this respect, the Swiss constitution is in strange contrast with the U. S. A. constitution. The Swiss established a truly federal government of the twenty-two cantons, or strictly speaking, of the nineteen full cantons and six half cantons, enumerated in the preamble. No provision is made for the admission of new states, and if this is to be done the constitution must be amended. On the other hand, the U. S. A. constitution contains a definite provision for admission of new states.

Its chief features. As the Swiss civil war took place before 1848, the modern constitution prevents the possibility of secessionist movements by forbidding all treaties of a political character between the cantons. The U.S.A. constitution states that federal law shall be executed by federal officers, and state law by state officials, but in Switzerland there is no such line of demarcation. Swiss citizenship is not formally defined in the constitution, but it is provided that "every citizen of a Canton is a Swiss citizen." The constitution does not contain a bill of rights as such, but personal rights are defined at some length. Equality of all citizens before the law (Art. 4), freedom of conscience and belief (Art. 49) and free exercise of religious worship (Art. 50), and freedom of the press are guaranteed. Article 52 forbids the "foundation of new convents or religious orders, or the re-establishment of those which have been suppressed." The citizens are also guaranteed the right of petition and the right to form associations, provided these associations do not employ anything illegal or dangerous to the state. It is interest-

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[1] *Government and Politics of Switzerland*, p. 48.

[2] *Ibid.* p. 49.

[3] *Ibid.* p. 50.

ing to observe here that the Swiss people had the same linguistic, religious and racial problems to solve as were confronting Indian statesmen, and the establishment and successful working of the Swiss federation was, therefore, a very valuable lesson to the people in India, who could not, however, establish a federal republic without a partition of the country on August 15, 1947.

Division of powers. Chapter I of the constitution contains General Provisions which also include the powers that are exercised by the federal government in Switzerland. Article 2, which defines the object of the Confederation, supplies the keynote to federal powers. The purpose of the Confederation, is "to ensure the independence of the country against the foreigner, to maintain peace and order within its borders, to protect the liberties and rights of its members, and to promote their common prosperity", and, therefore, the federal government has very limited and clearly specified powers. Article 3 makes this very clear: "The cantons are sovereign so far as their sovereignty is not limited by the Federal Constitution, and as such they exercise all rights which are not delegated to the Federal Power." The Confederation guarantees to the cantons their sovereignty; inalienability of their territories and rights of their citizens (Art. 5).

Freedom of Cantons. The constitutions of the cantons are free from federal interference, provided they "contain nothing contrary to the provisions of the Federal Constitution," maintain representative or democratic republicanism, and are accepted by the majority of the people of the cantons concerned. The cantons cannot form *political* alliances between themselves, though they may co-operate for other purposes. They curiously enough, "retain the right to conclude treaties with foreign states in respect of matters of public economy and police and border relations," provided all such arrangements contain nothing prejudical to the rights of the Confederation or of other cantons. But all communications between cantons and foreign governments must take place through the Federal Council. No canton or half-canton may maintain more than 300 armed men as a permanent military force. This is a provision which is not generally found in most other federal constitutions, because defence and the allied institutions are everywhere within the competence of the federal government. But the discipline of Swiss cantonal forces is regulated by federal laws, and in case of necessity the Confederation acquires "the right of exclusive and immediate control over all men not incorporated in the federal army and of all other millitary resources of the cantons."

This obviates the possibility of any cantons assuming a threatening attitude against the Confederation so as to declare a civil war. In case of any dispute between cantons or the outbreak of rebellion or disorder, the Federal Council deals with the question and even assumes almost dictatorial powers, should the situation require it. On the whole, the cantons retain very large powers inside the Confederation.

Powers of the central government. Apart from laws relating to the organization of the army, including declaration of war and making of peace, and the defence of the country and foreign relations, the Confederation has the sole control of water power, posts and telegraphs, all federal roads and bridges, aerial navigation, foreign exchange rate, coinage, weights and measures, manufacture and sale of gunpowder, marriage laws, and laws relating to extradition. It has the power to legislate in regard to "civil capacity; all legal questions relating to commerce and transactions affecting movable property (law of obligations, including commercial law and the law of exchange); literary and artistic copyright; the protection of industrial inventions, including designs and models; and suits for debt and bankruptcy," judicial organizations, legal procedure, penal law, trade in foodstuffs and other household commodities, and customs in general. The Confederation demands of the cantons to make provision for free and compulsory education. The federal government exercises concurrent powers with the cantons, in regard to the regulation of industry and insurance, construction and maintenance of highways, control of the press, and encouragement of education. In the field of concurrent powers federal laws prevail over those of the cantons.

Federal sources of revenue. With regard to finances, Article 41 empowers the Confederation to impose "stamp duties upon title deeds, receipts for insurance premiums, bills of exchange, and similar instruments," and such other documents subject to the condition that one-fifth of the net produce of stamp duties must be paid to the cantons. Article 42 lays down further resources of federal revenues, *viz.*, revenue from federal property, revenue from federal customs collected on the frontier, receipts from posts and telegraphs and gunpowder monopoly, half the gross receipts from military exemption taxes[1]

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[1] Military service is compulsory in Switzerland, and for certain reasons exemption to some persons may be granted on payment of exemption taxes, (Article 18).

collected by the cantons, stamp duties, and cantonal contributions according to the wealth and taxable resources of the cantons.

All other powers not specifically given to the federal government by the constitution are reserved to the cantons.

The Federal Legislature

Bicameral legislature. The Swiss Federal Legislature is called the Federal Assembly (*Bundesversammlung*) and consists of two Houses: the National Council and the Council of States. Unlike the U. S. A. constitution the Swiss constitution does not confer any special or executive powers upon any of the two houses. Treaties require sanction of both houses. Neither house has any special powers regarding appointments, impeachment, or initiation of revenue bills. Both houses transact business separately, except when they meet in joint sessions to transact business (as stated later below). As to the distribution of constitutional powers the two houses are almost exactly concurrent.

Lower Chamber; its composition. *The National Council* is the lower or popular branch of the legislature. It is composed of deputies elected by the people, by means of manhood suffrage, on the basis of proportional representation, there being one deputy for each 24,000 of the population. "Fractions greater than 12,000 are reckoned as 24,000" for the purpose of representation. There are cantonal districts which form the electoral districts. There being very great differences in the populations of cantons and half-cantons, some of the smallest of them have only one electoral district and only one deputy. The canton of Uri has only one deputy for its population of nearly twenty-seven thousand, whereas Bern has 33 deputies and Zurich 32. The total strength of the National Council was 196 at the elections of 1955.

Its term. Its life has been raised from 3 to 4 years, according to a law passed in 1930. The house is not dissolved earlier than four years because there is no parliamentary executive responsible to the legislature. The election takes place, after every four years, on the last Sunday in October.

Members: their qualifications. "Every citizen of the Republic who has entered on his twenty-first year is entitled to a vote; and any voter, not a clergyman, may be elected a deputy." Elections to the National Council are held on the last Sunday in October every four years. On the first ballot absolute majority is necessary for election,

But if any seat remains unfilled because of this requirement, a supplementary election is held two or three weeks later, when a simple majority is sufficient for election. This system of election is laid down by law. No man can at the same time be a member of both branches of the Federal Assembly. Each deputy gets, besides his travelling expenses an allowance of 50 francs for each day he attends the house.

Sessions, when held. The sessions are held regularly, four times a year, in March, June, September, and December.

Its presiding officer. The house chooses its own President and Vice-President for each session, "neither being eligible for the office in the next consecutive session", *i.e.*, for the next year, because all sessions held in one year are, by a legislative fiction, treated as one session. In case of equality of votes the President has a casting vote, so that in voting on ordinary measures he can vote twice, but in the election of members of committees and bureaus, he votes in the same way as other members. "The President of the National Council is far from being as powerful and influential" as the Speaker of the American House of Representatives. "Nevertheless, the former office is considered a great prize by ambitious parliamentary leaders and those men who have been so fortunate as to attain it enjoy a special prestige among their party associates. The same is true of the corresponding office in the Council of States".[1]

Upper chamber. *The Council of States* is the Upper House of the Swiss Federal Assembly. Like the senate in the U. S. A. and Australia, it is composed of the representatives of the cantons each of which sends two members; the total membership is forty-four for the twenty-two cantons. Each half-canton, however, sends only one representative. Curiously enough, "the Swiss constitution does not determine the method of electing members of the Council of States; it does not fix their qualifications—all these matters being left to the discretion of the cantons. It does not even provide for the exclusion of ministers of religion from this house".[2] The constitution, nevertheless, lays down that the cantons would pay the salaries of their respective representatives.

How constituted. Even then, there is a growing tendency among the cantons toward uniformity. For example, in most cantons the representatives to the Council of States are chosen by direct popular

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[1] *Government and Politics of Switzerland*, pp. 79—80.

[2] *Ibid.* p. 83.

election. In some cantons the cantonal legislatures choose these representatives.

Term of members. A three-year term is becoming the general rule, although in the case of some cantons the term of the representatives varies from one to four years. The cantons are at liberty to recall the representatives at any time and send others instead. But there is a provision in Article 91, "which seems rather inconsistent" with this authority for recall, *viz.* the members of the Council of States "must not be instructed as to their votes in that body." The Council of States is neither a refuge for reactionaries nor a haven for the advocates of particular rights of cantons. Sometimes it is argued that if the Council of States agrees with the popular will expressed by the National Council or the people at referendum, it is useless, and if it disagrees it is pernicious. But, though originally designed to reconcile the smaller cantons (by equal representation with the larger ones) it has survived this purpose and often justified its utility by its contribution as a second chamber. That is why in 1870 the National Council rejected by 64 to 7 votes a measure for the abolition the of Council of States.

Members paid by cantons. All the cantons pay the salaries and mileage to their representatives at the same rate as is fixed by the federal government for the payment of members of the National Council. But the federation pays the members of the Council of States compensation for serving on legislative committees. Members of the Council of States cannot, at the same time, be members of the lower house or of the Federal Council.

Presiding officer. The Council of States elects its own President and Vice-President in the same way as the lower house. But members of the same canton cannot be elected to both these offices for the same sessions, nor can any of these officers be elected from among the representatives of the same canton for two consecutive sessions. (Article 82). The Vice-President of one year is customarily promoted to the office of President for the next year. All the sessions held in one year are considered to be parts of one session. In case of a tie the President exercises a casting vote.

Powers of the federal legislature. The Council of States and the National Council constitute the Swiss federal legislature, *i. e.*, the Federal Assembly. All legislative measures, be they resolutions or bills, are prepared by the Federal Council. The members of the legislature or the people (when they initiate a measure) generally intimate

their intention to move a measure along certain lines and the Federal Council drafts it, though some members or sometimes the people even send a complete draft. When a session is about to be held, the Federal Council places the complete list of resolutions, and bills, meant for the session, before the Presidents of the Council of States and the National Council. These two Presidents decide between themselves as to which of the measures are to be first discussed in each of the two Houses. It may be mentioned here that when a particular measure is introduced in one House, it is supposed to have been introduced in the Federal Assembly, so that even if it is defeated in one House it is still considered to be before the other. The Houses have equal powers. In case of conflict between them, each House appoints a small committee to confer with that of the other, and generally a compromise is reached. In case no compromise is arrived at, the measure fails. "Conflicts of this character, however, have never been pushed to the point of constitutional crisis in Switzerland."[1] Contrary to the practice in many other constitutions, the Swiss constitution does not contain any "provision for deciding an issue on which the Houses may differ, but differences are neither frequent nor serious, because the Council of States is from its mode of choice practically no more conservative than the larger House. The ultimate control of legislation reserved to the whole people makes this omission unimportant."[2]

The powers of the Assembly "extend into every field of government" that is within the competence of the federation. These powers of the two Houses have thus been summarised:

(1) "They exercise the sovereignty of the Confederation in its dealings with foreign powers, determining questions of peace and war, passing all enactments concerning the federal army, and taking the necessary measures for maintaining the neutrality and external safety of Switzerland."

(2) "They maintain the authority of the Confederation as against the Cantons, taking care to pass all the measures necessary for fulfilling the federal guarantee of the cantonal constitutions, and deciding, upon appeal from the Federal Council the validity of agreements between the Cantons or between a Canton and a foreign power."

(3) "They exercise the general legislative powers of the Confedera-

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[1] *Government and Politics of Switzerland*, p. 96.

[2] *Modern Democracies*, vol. I. p. 336.

tion, providing for the carrying out of the Federal Constitution and for the fulfilment of all federal obligations."

(4) "They pass upon the federal budget and control the federal finances".

(5) "They organise the federal service, providing for the creation of all necessary departments or offices and for the appointment and pay of all federal officers."

(6) "They oversee federal administrative and judicial action, hearing and acting upon complaints against the decisions of the Federal Council in contested administrative cases."

(7) "With the cuncurrence of the people, they revise the Federal Constitution."[1]

The above description shows that the Federal Assembly exercises legislative, executive and judicial powers. This is so because the Swiss have not followed Montesquieu's principle of separation of powers, and the Swiss executive is not responsible to the legislature but merely carries out the latter's will, and the Swiss judiciary too is not the supreme judicial authority, unlike the U. S. A. Supreme Court.

Joint sessions. The two Houses meet in a joint session for electing the members of the Federal Council, its President and Vice-President, the Federal Chancellor and other important federal Officers, to exercise the pardoning power and to decide conflicts of jurisdiction between federal authorities. And in such joint sessions the National Council due to its 196 Councillors, has a preponderating voting power over the 44 members of the Council of States.

Records of the legislature. The records of the Assembly are kept in all the three languages, German, French and Italian, and members are free to speak in any of these. The proceedings of the two Houses are marked by very great dignity and decorum, and absolute silence is observed when a member is speaking. The members know their business well and as the strength of each House is manageable, all matters are carefully and thoroughly discussed.

Quality of membership. Military matters are specially treated with thoroughness, because, military service being compulsory in Switzerland, the members speak with personal knowledge and exhibit great interest. "Educational standards are high in both houses, three-fifths of the National Councillors and three-fourths of the members of the Council of States being men of university train-

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[1] *The State* (Edition, 1930 A. D), para 696.

ing."[1] The members are those who have usually acquired even foreign university training. Party spirit is not so highly demonstrated in the Swiss legislature as in the U. S. A. Congress. The average member in the Swiss legislature "is solid, shrewd, unemotional, or at any rate indisposed to reveal his emotions. He takes a practical common sense and what may be called middle-class business view of questions, being less prone than is the German to recur to theoretical first principles or than is a Frenchman to be dazzled by glittering phrases."[2] He attends the House regularly and punctually. "These qualities of the individual have given its peculiar quality to the Swiss national legislature. It has been the most businesslike legislative body in the world, doing its work quietly and thinking of little else. There are few set debates and still fewer set speeches, Rhetoric is almost unknown....Speakers are not interrupted and rarely applauded....In the National Council members speak standing, in the Council of States from their seats."[3]

The Federal Executive

Collegiate Executive. Switzerland has a government by Commission; the Swiss Federal Council (*Bundesrat*) the name given to the executive, is of a peculiar type. Viscount Bryce thus describes its uniqueness: "In no other republic is executive power entrusted to a Council instead of to a man, and in no other free country has the working executive so little to do with party politics. The Council is not a cabinet, like that of Britain, and the countries which have imitated her cabinet system for it does not lead the legislature, and is not displaceable thereby. Neither is it independent of the legislature, like the executive of the United States and of other republics which have borrowed therefrom the socalled "Presidential system," and though it has some of the features of both those schemes, it differs from both in having no distinctly partisan character. It stands outside party, is not chosen to do party work, does not determine "party policy, yet is not wholly without some party colour."[4]

How constituted. The Federal Council consists of seven members selected for a four-year term by the Federal Assembly meeting

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1 *Government and Politics of Switzerland*, p. 98.
2 *Modern Democracies*, Vol. I, p. 387.
3 *Ibid.* p. 388 Cf. *Government and Politics of Switzerland*, pp. 97-98.
4 *Modern Democracies*, Vol. I, pp. 393-94.

in a joint session. Casual vacancies are also filled up by the Assembly for the remainder of the outgoing member's term. Any Swiss citizen eligible to the National Council may be elected a Federal Councillor. But not more than one person from any one canton can be chosen for the Federal Council (Art. 96). Another restriction has also been placed, by a law, on the method of election: "Persons related by blood or marriage without limit in the direct line and up to and including the fourth degree in the collateral line, husbands who have married sisters, and also persons connected by adoption, may not at the same time be members of the Federal Council....Whoever enters by marriage into any such relationship gives up his office."[1] By convention each of the two biggest cantons, Zurich and Bern, have always been given a member, and the remaining five seats are distributed between the other cantons, one or two being usually assigned to those in which French or Italian is the predominant language. Members who offer themselves for re-election are usually re-elected, there having been only two exceptions to this since 1848. Consequently, they are very experienced men, and there have been cases of members holding office for fifteen to thirty years. Though there is nothing in the constitution to warrant it, members have usually been selected from the council of States or the National Council. But they have then to resign their seats in the legislature. This ensures complete separation of the executive from the legislature.

Elected President as Head of the Executive. Each year the Federal Assembly elects one of the Federal councillors to act as President and another as Vice-President. The Vice-President of the outgoing year is usually elected as President for the year following. No man can act as President or Vice-President for two *consecutive* years. The Swiss President is merely the Chairman of the Federal Council, represents the Confederation on ceremonial occasions at home and abroad, conducts the business of the Council, supervises its work in general, and in urgent cases acts on behalf of the latter, and in case of a tie in the Council he has a second vote.

Head without powers. He has, however, no power of veto over legislation, and is, like any other member of the Council, in charge of one of the departments of administration. He has no special privileges or powers and is, otherwise, a mere figure-head. He has often been described as 'A President of No Great Importance.' And there is

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[1] Quoted in *Government and Politics of Switzerland*, at pp. 104-105.

some justification for this, because his term is short and he does not exercise any powers which are vested in the American or German, or even the French President. And even as we say this, "the federal presidency commands considerable influence and is the most distinguished office open to political thriving in that country."[1]

Each Federal Councillor gets a salary of 48,000 francs a year, the President getting an additional sum of 3,000 francs.

Duties of the Federal Council. Under the powers granted to it (Art. 102), the Federal Council directs all federal business in accordance with the decrees of the federation, "ensures the observance of the Constitution and the laws and decrees of the confederation and Federal concordats," and takes necessary steps to that end; guarantees the observance of Cantonal Constitutions; "drafts laws and decrees for presentation to the Federal Assembly and reports upon proposals submitted by the Councils or by the Cantons;" provides for the execution of federal laws and judgments of the Federal Tribunal, and agreements and arbitrations between Cantons; makes all administrative appointments not done by the Assembly; examines and approves treaties concluded between cantons or with foreign countries; conducts all foreign affairs of the country; ensures the external and internal safety of Switzerland in urgent cases, calls out the militia to keep internal order, and is in charge of federal army; administers federal finances; gives account of its work to the Assembly and makes such special reports of its work as the Assembly may demand.[2] The members of the Federal Council are subject to interpellations. The answer to a question may be followed by a general discussion, but not by a vote of confidence or lack of confidence.

Departments of Administration. For the conduct of these multifarious activities, the Federal Council has created seven departments of Administration to carry out the wishes of the Assembly. These are the departments of Foreign Affairs, Justice and Police, Interior, Military, Finance and Imposts, Industry and Agriculture, and Posts and Railways. Each member is in charge of one department. Formerly, the President used to be in charge of Foreign Affairs, but the practice has recently been discontinued, and the portfolios are redistributed between members each year. Apart from the chief member in charge of a department, there is also assigned a "substi-

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[1] *Government and Politics of Switzerland*, p. 110.

[2] See Article 102 of the Constitution.

tute head" for that department, the latter himself being the chief of another department. This system ensures an efficient working as it enables the members to acquire first-hand knowledge of the intricacies of all departments in turn.

Working of the Federal Council. The Federal Council generally meets twice a week at Bern, the quorum being four. Decisions are arrived at by a majority vote. The executive system being "collegiate" the members are not debarred from openly opposing in the Assembly the measures introduced by their colleagues, and this is possible because each Federal Councillor is, in general, individually responsible for his actions and the Council as a whole is not responsible to the legislature, in the sense in which the British Cabinet is responsible to Parliament. Even when a particular measure is introduced into the Assembly with the unanimous consent of the Council, and the Assembly rejects it, "the ministers do not even have the choice between submission and dismissal; they submit and obey with good grace."[1] And the ministers continue to work, so that the Council is, in this respect, like the civil service in any other country, with this difference that appointments, *i. e.*, elections, to it are formally made every four years. The members of the Federal Council can attend, and speak in, any of the Houses of the legislature. They can freely take part in debates and are even subjected to interpellations. But not being members of the Assembly, they cannot vote. They carry out the wishes of the Assembly which holds the final authority in Swiss politics. The sessions of the federal council are held in secret and motions are decided by a viva voce vote; only in case of appointments written ballots may be taken. A majority of those voting decides, but subject to the minimum of three votes in favour of a motion. There is, however, no spoils system in Switzerland despite the wide appointing power of the executive.

Not responsible to the legislature. The Federal Council derives its powers from the constitution and is not "representative of some other executive authority in the state." It is not based upon the system of formation of the cabinet from the party in majority and it has no prime minister, so that the members are "elected not only from different party groups but from party groups fundamentally opposed to each other," and exhibit great *esprit de corps*. It depends for its policy upon the Assembly, and it "cannot dissolve

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[1] *Government and Politics of Switzerland*, pp. 112-113.

the legislature and appeal to the electorate for a decision in its favour," and the Assembly too "cannot dismiss the executive councillors out of hand." In spite of these pecularities the Council works efficiently and compactly due to its short size, the long experience of the members and the great influence they exercise in the Assembly through the members of the various parties to which they belong, and its power of making appointments. During the two Great Wars (1914-18) and (1939-45), the Assembly had endowed the Federal Council with almost unlimited powers "to take all measures necessary to the security, integrity, and neutrality of Switzerland; and to protect the credit and economic interests of the country," and for this purpose it was given "unlimited power to meet expenses" and "to conclude all necessary loans," all this subject to the provision that it rendered to the Assembly at the latter's next session an account of how it had exercised these "unlimited powers." Thus, what was given at that time certainly increased the influence of the Council for a long time to come.[1] The Swiss executive has developed a high standard of efficiency. According to Adams and Cunningham "the members of the Federal Council yield to no other government in Europe in devotion to their country, in incessant hard work for a poor salary, and in thorough honesty and incorruptibility.[2]

Bryce on its importance. Viscount Bryce thus speaks in admiration of this system of the Swiss executive: "It provides a body which is able not only to influence and advise the ruling Assembly without lessening its responsibility to the citizens but which, because it is non-partisan, can mediate, should need arise, between contending parties, adjusting difficulties and arranging compromises in a spirit of conciliation. It enables proved administrative talent to be kept in the service of the nation, irrespective of the personal opinions of the Councillors upon the particular issues which may for the moment divide parties.....It secures continuity in policy and permits traditions to be formed."[3]

Success of the Federal Council. And apart from all criticisms of the Swiss Federal Council and suggestions for its reform, it may confidently be said that "the Swiss executive has developed high efficiency within the limits of its powers and opportunities", and it

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1 *Government and Politics of Switzerland*, pp. 114 & 125—125.
2 *The Swiss Confederation*, p. 38.
3 *Modern Democracies*, Vol. I. pp. 398—99.

has succeeded in carefully balancing the relations between the three nationalities, French, German and Italian, that inhabit the small country.

The Chancellor. Before concluding this description of the Swiss executive; mention may be made of an important federal officer, the Chancellor, provided for in Article 105 of the constitution. This officer is elected every four years by the Federal Assembly and holds office concurrently with it. He acts as the General Secretary of the Federal Council and the Federal Assembly, and "is under the special supervision" of the former. All stenographic work, work of translation, keeping of records and documents, and the formal organization of elections and of initiative and referendum votes, etc. form the duties of the Chancellor. All federal laws require his signature, not for their validity but for their accuracy. He is, thus, a mere "glorified head clerk" and his name must not lead one to consider him as great and powerful a figure as the German officer of the same name.

The Federal Judiciary

Its composition. The constitution establishes a 'Federal Tribunal for the administration of justice in federal matters.' At present it consists of 26-28 members, with 11-13 supplementary judges. They are all appointed by the Federal Assembly for a term of six years and are eligible for re-election. One of them is appointed President and another Vice-President, each for a two-year term, and none of them is re-elected for another consecutive term. The salary of the President is 32,000 francs, a year, while each of the others receives 30,000 francs. Any Swiss citizen eligible for election to the National Council, irrespective of his legal ability and qualifications, may be elected a member of the Tribunal (Art. 108), provided he is not a member of the Legislature or holder of any other office simultaneously. It seems to be a curious fact that the constitution, at least in theory, does not lay down legal qualifications for a judge, although in actual practice only persons who possess legal ability are elected as judges.

Its jurisdiction. The Federal Tribunal has jurisdiction to try all civil cases between the Confederation and the cantons; between Confederation and corporations or individuals; between Cantons themselves; between Cantons and corporations or individuals. It has also the power to try penal cases involving high treason against the Confederation and revolt against the constitution; all crimes against

Law of Nations; crimes and political offences 'necessitating the intervention of the Federal army, and charges against Federal officials.' It has also jurisdiction with regard to "conflicts of jurisdiction between Federal authorities of the one part and Cantonal authorities of the other part; disputes between Cantons in matters of public law; complaints of violation of the constitutional rights of citizens and complaints by individuals of violation of concordats and treaties".[1] Curiously, the Tribunal has no power to adjudge the validity of laws passed by the legislature and in this respect it is quite different in its prestige and influence from the U. S. A. Supreme Court which is independent of the legislature and the executive in America.

"So that because of its limited power and the mode of election of the judges and their tenure as well as the control of the legislature over the judiciary the Swiss have failed to establish an impartial and a powerful federal judiciary, and this becomes more noteworthy when it is remembered that they copied the Americans in several respects."[2] Although it is true that the scope of jurisdiction of the Swiss judiciary has been constantly increasing, it seems improbable that it will ever attain the constitutional position of the Supreme Court of the United States, and particularly possess the power to declare legislative acts unconstitutional. It would be contrary not only to Swiss but to continental traditions as well.[3] And the reason is clear: the Swiss have not provided for separation of powers; the Swiss legislature is the most powerful part of governmental machine and even that is under the people's constant watchful eye, who exercise direct control by means of Referendum, Initiative and Recall.

Its working. The judges of the Tribunal are so chosen as to represent all the three national languages. The seat of the Tribunal is at Lausanne, the Capital of the French speaking canton of Vaud. This was arranged as 'a graceful concession to the feeling of Romance Switzerland,' and also to keep the Tribunal free from the political atmosphere of Bern. The Tribunal is divided into three divisions each with eight judges, to try cases of public law and civil law. In trying criminal cases, the Tribunal is assisted by juries each consisting of twelve members chosen by lot from amongst the fourteen that are selected out of a list of 54, each party to the suit having the privilege

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1 Article 113 of the constitution.

2 *Federal Polity*, pp. 186-87.

3 *Government and Politics of Switzerland*, p. 177.

to object to twenty names on this list. The jurors receive daily allowances for services rendered.

Political Parties

Absence of acute party spirit. "The parties play a role far inferior to that of a party in France or England, because in the executive sphere the Houses cannot displace the Ministers, and in the legislative sphere the Houses have not the last word since that belongs to the people".[1] Apart from this, there are other reasons for the absence of acute party spirit in Swiss politics. The sessions of the legislature are short and hence there is no time for development of a party; the members in the legislature sit district-wise and not in party blocks. The national government has few rewards to bestow upon its supporters, because the cantons enjoy vast powers. Appointments in the national government are made not for political purposes but on the basis of merit; the emoluments of office are too low to attract the attention of pushing men who seek favours. The Federal Council is elected on the basis of proportional representation. This does not encourage the formation of cliques. The existence of referendum and recall do not create parties in such a small country where voters always feel inclined to vote for their neighbours, measures attracting greater attention than men; and neighbours are more likely to support the favourite measures than candidates run by parties. And lastly, the Swiss people are, by nature, business-like men, and not made up of the stuff of which political parties are generally made. They dislike demonstration at elections.

Old Parties. In the beginning, political parties were formed over the question of states' rights. Catholic Conservatives, who called themselves "Federalists," insisted on the guarantee of cantonal rights. It is of interest to observe here that the political party of the same name (Federalists) in America, under the leadership of Hamilton and Washington, stood for strengthening the central government and not the State governments, and thus pursued a policy in contrast with that of the Swiss Federalists. The other party, in Switzerland, was that of the Liberals who called themselves "Centralists" and favoured the extension of the power of the federal government. The War of the Sonderbund ended in the defeat of the Catholic Conservatives who,

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[1] *Modern Democracies*, vol. 1, p. 390.

though defeated on the field of battle, continued with admirable organisation and harmony. The victorious Centralists, later on, became divided into "Radicals" (Independent Democratic) and the 'Right Wingers.' The strength of the Radicals continued to increase, as their advocacy for the adoption of referendum and initiative in the federation gained popular support. The constitutional revision of 1874 was a decisive victory for the Radicals who soon dominated Swiss politics. The Right Wingers soon disappeared. But Radicalism, in its turn, gave birth to Socialism which captured six seats in the National Council in 1890. The Socialist movement could not make much headway. "Already, however, Switzerland has attained a higher degree of democratic control than any other country, and, it has also made great strides towards collective ownership of its great industries. It is doubtless because of these facts and the wide diffusion of small property holdings that Socialism has remained relatively so weak in Switzerland as compared with Germany and France".[1]

Present Parties. Thus, the Catholic Conservatives and the Independent Democractic Radicals are the only important parties in Switzerland. The former gain a good following in the upper House and form a strong minority. They have a majority in the popular chamber, particularly because they are very strong in the biggest and most populous cantons that send a very large number of representatives to the National Council which is formed on a population basis.

Amendment Of The Constitution

Two kinds of revision: partial and total. The constitution provides for its complete or partial amendment at any time. "When either division of the Federal Assembly passes a resolution for the total revision of the Constitution, and the other division does not agree or when 50,000 Swiss voters demand a total revision, the question whether the Constitution ought to be revised is in either case submitted to the people who vote Yes or No. If in either case a majority of the Swiss citizens who vote pronounce in the affirmative, there shall be a new election of both Councils for the purpose of undertaking the revision." (Art. 120).

How a partial revision takes place. A partial revision may

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[1] *Government and Politics of Switzerland*, p. 296.

take place in one of the following two ways: (1) When 50,000 Swiss voters initiate a measure for partial revision, either by a simple desire or by presenting a complete draft of the amendment. But in the former case the Federal Council proceeds to draft the amendment after the Federal Assembly approves of the demand for revision along the general lines; and in case the Assembly disapproves, the question whether there shall be a partial revision of the constitution is referred to the people. And if they initiate a complete draft, the Assembly may propose its own draft, when both of them are referred to popular vote. (2) An amendment to the constitution may be proposed by either, or both branches of the Assembly in the way 'prescribed for passing federal laws.' Thus both the people and the legislature have a right to propose an amendment.

Compulsory referendum for amendment of the Constitution. In either of the above cases the amendment is referred to the people. It is considered to have been passed only when it has been voted for by a majority of the people in a majority of the cantons (in reckoning the majority the vote of a full canton being counted one and that of a half-canton only half), and also by a majority of the people voting in all cantons. That is to say the amendment must be accepted by the people of at least 11½ cantons, and by the people of the whole confederation. Up to June 1921, twenty-nine amendments were referred to people of which all but one were accepted; of these only five were initiated by the people. One of these was initiated by 117,494 votes, regarding Gaming Houses, in a complete form. The Assembly produced an alternative draft. Both drafts were referred to the people, when the result was:

	Votes for	Votes against	Cantons for	Cantons against
Initiative Draft	269,740	221,996	13-1/2	8-1/2
Assembly Draft	107,230	344,914	1/2	21-1/2

Cantonal Governments

The part-states or cantons in Switzerland are of varying sizes, ranging from Graubunden and Bern with 2,746 and 2,658 sq. miles respectively to Zug with only 93 sq. miles. Bern has the largest population, *viz.*, 801,943 souls and Appenzell Interior (a half canton) has the smallest, *viz.*, 13,427 souls only. These cantons were admitted into the Confederation at different periods, from 1291 to 1815 with their own

institutions and constitutions. Before joining the union, most of the cantons were independent and sovereign; on joining the union they parted with only specified powers and retained their sovereignty in all other matters. And this accounts for the designation of the union as 'Confederation', and not 'federation' as in other countries.

The following table gives the area, population, and representation in the lower federal house of the twenty-two cantons that compose the Swiss Confederation :

Name of Canton with year of joining the Confederation	Area in sq. miles	Population on 1 Dec. 1950	No. of Representatives in the National council.
Zurich (1351) ..	668	777,002	32
Bern (1353) ..	2,658	801,943	33
Luzern (1332) ..	576	223,249	9
Uri (1201) ..	415	28,556	1
Schwyz (1291) ..	361	71,082	3
[1]Obwalden (1291) ..	190	22,125	1
[1]Nidwalden (1291) ..	106	19,389	1
Glarus (1352) ..	264	37,663	2
Zug (1352) ..	93	42,239	2
Freiburg (1481) ..	645	158,695	7
Solothurn (1481) ..	306	170,508	7
[1]Basel-Stant (1501) ..	14	196,498	13
[1]Basel Land (1501) ..	165	107,549	
Schaffhausan (1501) ..	115	57,515	2
[1]Appenzell, A.—Rh, (1513) ..	94	47,938	2
[1]Appenzell, I,—Rh, (1513) ..	67	13,427	1
St. Gallon (1803) ..	777	309,106	13
Graubunden (1813) ..	2,746	137,100	6
Aargau (1803) ..	542	300,782	12
Thurgau (1803) ..	388	149,738	6
Ticino (1803) ..	1,086	175,055	7
Vaud (1803) ..	1,289	377,585	16
Valais (1815) ..	2,021	159,178	7
Neuchatel (1815) ..	309	128,152	5
Geneve (1815) ..	109	202,918	8
Total ..		4,714,992	196

Direct democracy in some cantons. Each canton or half-canton is sovereign in so far as the constitution does not limit its independence. In some of the smaller cantons—Uri, Upper Unter-

[1] It is a half-canton.

walden, lower Unterwalden, Glarus, Appenzell Interior, and Appenzell Exterior—there is direct democracy. All citizens form the popular and supreme legislative authority (*Landsgemeinden*) which also elects all officers. In most other cantons there is either obligatory or optional referendum; in Fribourg alone there is no referendum in any form and this is the only example of a canton in Switzerland with representative institutions.

Cantonal legislatures. With the exception of the six cantons with direct democracy, all other cantons follow the same general plan of cantonal government. Each has a unicameral legislature elected by a popular vote (in ten of them by proportional representation) for a term of 3 or 4 years. The basis of representation is very low, 350 to 500 inhabitants getting a member. The legislature is generally called the *Grand Council*.

Amendment of constitutions. In all cantons the constitutions have to be ratified or amended by the citizens. In several cantons all laws must be referred to the people before being finally accepted; and many financial measures are also similarly subject to obligatory referendum. To the cantonal constitutions, amendments may be proposed by cantonal legislatures as well as by initiative petition.

Cantonal executives. Each canton has its executive power entrusted to a board or commission of five to seven members known by various names, *e.g.*, Administrative Council, Small Council or Council of State. Zug and Ticino elect the executive commission by means of proportional representation, while in most cantons it is elected by the people by an ordinary vote. In Fribourg and Valais only; the commission is elected by the cantonal legislature. Each commission has a president and a vice-president. "As in the case of the Federal Council, the executive council of a canton acts as a board upon all matters of importance."[1] Its duties and relations with the cantonal legislature are almost the same as those of the Federal Council *vis-a-vis* Federal Assembly, *viz.*, the council is the servant of the legislatures and carries out the latter's decision.

Cantonal judiciaries. Each canton has a judical system of its own. Excepting minor local differences, the general principles underlying the cantonal judiciary are the same in all cantons. There are separate courts to try civil and criminal cases.

Local government in cantons. The smallest unit of local go-

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[1] *Government and Politics of Switzerland*, p. 320

vernment is the *Swiss Commune*. "Although limited as to territory, political Communes differ widely in population. At one end of the scale are remote mountain hamlets of less than fifty inhabitants; at the other, cities of the largest size up to and including Zurich with over 200,000 people."[1] There are 3,164 communes in the whole country. In larger communes, where the local conditions, particularly the physical feature of the territory, demand it they are called *Quarter Communes*. In each commune the chief administrative body is the Communal Council of five to nine members chosen either by the town meeting or by the direct popular vote. There is a president and a vice-president in each of these councils.

Education in cantons. All cantons have their education systems, remarkable for their universality and practical character. Teaching of civics being compulsory, the Swiss are very good citizens. Most cantons maintain agricultural schools, besides commercial secondary schools, and vocational schools "which prepare young men and women for the federal post, telegraph, telephone, and customs services." Army training receives particular attention. Careful attention is devoted to school hygiene, including periodical inspection, provision of baths for pupils, supervised sports and hikes through the most beautiful parts of the country, vocation colonies, milk cures, and school lunches."[2] The cantons, on the whole, enjoy a very extensive measure of autonomy in school affairs, though the federal government subsidises cantonal education, and demands of the cantons a strict adherence to a high standard of education.

All the cantons take due care to promote agriculture which bulks very large in Switzerland. They also undertake to promote industry and commerce. The cantons enjoy large powers for the administration of justice.

Direct Democracy

Switzerland, the home of direct democracy. Of all the countries in the world, Switzerland has retained, to the largest extent, the methods of direct democracy. "Nothing in Swiss arrangements is more instructive to the student of democracy, for it opens a window into the soul of the multitude. Their thoughts and feelings are seen directly

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[1] *Ibid.* pp. 326-27

[2] *Ibid.* p. 337.

not refracted through the medium of elected bodies."[1] This has been possible in Switzerland because of several factors: the country being mountainous, there are many valleys each of which has a distinct territory and population, different from the others; the cantons are small, even the largest of them having a little over three-fourths a million inhabitants, and the average area scarcely reaches six hundred and forty square miles. "The people of such communities stand, as it were, in the midst of affairs. They are in a sense always at hand to judge of the conduct of public business. Their feelings and their interests are homogeneous, and there is the less necessity to part with their powers to representatives."[2] America too has the institutions of direct democracy, but the need for them is greater in Switzerland, because here the number of laws passed by the legislature is very small and people have to supplement them.

The two most important institutions of direct democracy, referred to above, are the Referendum and the Initiative, the former rectifying the errors of commission, and the latter those of omission, on the part of the representatives of the people.

Referendum in the Confederation. *Referendum* in Switzerland is obligatory for all constitutional amendments. Of this we have already made mention. For other laws, it is optional. This optional referendum is entirely of Swiss origin, and is the "result of the revolutionary movement of the thirties." It was adopted as a part of the federal constitution in the year 1874, though it had existed much earlier in the cantons of Valais, Graubunden, Bern and Geneva, even before the nineteenth century. It may be invoked in case of all laws and resolutions of general application. "In practice, treaties, the annual budget, money subventions for local improvements, and decisions, upon concrete questions submitted to the legislature, such as cases of conflict of authority, approval of cantonal constitutions, etc., are exempted from the referendum."[3] Thirty thousand Swiss citizens may demand a referendum by submitting a signed petition, but in practice this number is largely exceeded. Eight cantons may also demand a referendum but no such action has ever been taken. The time within which referendum may be demanded is ninety days after the passing of the law. In practice, nearly seven per cent. of the laws

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[1] *Modern Democracies*, vol. I, p. 415.
[2] *The State*, (Edition, 1900), *p.* 309.
[3] *Government and Politics of Switzerland*, p. 158.

passed by the Federal Assembly have been rejected by referendum, which shows that people do take interest in law-making.

Referendum in cantons. As regards cantons, referendum exists in all cantons for all changes in the Cantonal Constitution; in eight of them all laws and resolutions are subject to obligatory referendum; in seven of them there is optional referendum which may be demanded by a prescribed number (varying from canton to canton) of citizens; in three of them there is a distinction between obligatory and optional referendum; and in one canton only (Fribourg) there is no referendum for ordinary laws.

Its Criticism. Though referendum has produced some good results in certain cases, it has met with adverse criticism for the following reasons:

1. *Smallness of the Vote*:

In most cases the opponents to a measure go in larger numbers to cast votes, than its supporters who generally stay at home. There is thus a small proportion of voters who take interest in it, though the actual number depends upon the nature of the measure. Largest number of votes are cast on religious measures, then come railroad, school, and financial measures in descending order of importance.

2. *Inability of the Voters*:

The ordinary voters are not competent to form a serious and correct opinion on legislative measures, particularly those of a complex nature. The voters get printed copies of the measure, often produced at considerable cost to the public exchequer, and the real battle is left to be fought in the press and on the platform.

3. *It lowers sense of responsibility*:

The representatives in the legislature become less responsible. Under party pressure they occasionally vote for a measure, when it is before the legislature, even when they consider it bad or harmful, hoping for its rejection by the people.

4. *Demagogy is encouraged*:

Though some people extol it as the most perfect institution, M. Droz complains that it furnishes a basis for demagogy, and encourages the growth of professional politicians, whose ideas are systematically negative and who are constantly trying to spread discontent among others. But he concludes with the remark that the system has done more good than harm.

On the whole, though it is imperfect like all human institutions, yet in the existing circumstances, referendum has supplied a real want and

by mitigating party feelings has done a valuable service.

Value of referendum. It has largely contributed to the making of Switzerland one of the most orderly and well-governed states. And as one of the experienced Swiss legislators has remarked, "the referendum prevented but little good that we wished to do, but by simply standing as a warning before us averted much evil....In spite of possible backward movements, it did not condemn democracy to a halt, but has given steadiness to progress itself."[1]

Initiative in the Confederation. *Initiative* is the device by which a certain number of citizens can propose a law and require a popular vote upon it, in spite of the refusal, on the part of the legislature, to adopt their views. Initiative in the confederation exists for demanding changes in the constitution as discussed before. Out of the ten amendments, proposed by initiative, only three were successful, whereas of the twenty-one proposed by the legislature, as many as seventeen were adopted. This shows "the much greater mortality of initiative than of legislative amendments." In spite of all this, "The permanence of the present constitutional initiative is assured, and there is considerable advocacy of the proposition to extend it to the enactment of ordinary federal legislation."[2] But so far the demand to secure the extension of "the legislative initiative is not accepted because a legislative power in the people would infringe the Federal principle of legislation by the unitary element and the cantons concurrently."[3]

Initiative in cantons. As for the cantons, a prescribed number of citizens (varying from canton to canton) may "demand either a general revision of the constitution or propose some particular amendments to it." In the former case, the cantonal authorities either proceed to prepare a draft of the amendment along the lines suggested in the initiative demand and submit it to popular vote, or the very question (in certain cantons) whether there should be revision of the constitution is referred to the people. For ordinary cantonal legislation, too, most of the cantons provide for initiative demand by the citizens.

Swiss view of democracy. The Swiss hold that democracy is not complete unless the people have also a right to enact laws directly, and the initiative is used to supply this want. Unlike a petition, the

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[1] *Government and Politics of Switzerland*, p. 161.

[2] *Ibid.* p. 151.

[3] Finer, *Theory and Practice of Modern Government*, footnote on page 92.

initiative demand is binding upon the legislature. Although it is a complement of the referendum it was not introduced as such or simultaneously with it. At first it was not introduced as a means to prevent the legislature from neglecting the desires of the people.

Criticism of Initiative. Though referendum has produced some beneficial results, initiative has been criticised by several eminent writers, including M. Droz and Herman Finer. The former declares that 'whereas a democracy ought to rest on secure foundation, the new initiative puts the constitution in question at every point.' He speaks of it as the beginning of a period of demagogy in which self-appointed committees have as much importance as regular governments; and thus it is a continual peril to the quiet and prosperity of the country and is 'destined to accomplish a work of disintegration and destruction.' (This is, however, an exaggeration). But it is certainly absurd to suppose that the three or four successful initiative demands summed up the desires of the people. It reduces the sense of responsibility of the legislature; the people are not sufficiently qualified to form an opinion upon many legislative measures, "the results of a popular vote cannot be always deemed a true expression of the popular mind, which is captured by phrases, led astray by irrelevant issues, perplexed by the number of distinct points which a bill may contain, and thus moved by its dislike to some one point to reject a measure which, taken as a whole, it would approve, no amendments to an initiative demand, however bad it may be, is possible; and it puts too heavy a burden on the voter."

Supporters' view of Initiative. Yet its advocates hope much from it. They think that it secures the sovereignty of the people; enables them to express dissatisfaction with their representatives if these fail to discharge their duties, stimulates the patriotism and sense of responsibility of the people who feel 'more disposed to support the law they have shared in making'; promotes political education of the masses; reduces the influence of parties by enabling people to judge measures on their merits; provides a check upon the legislature where the executive has no veto power; and finally shows the authority (the People) which 'can deliver a decision from which there is no appeal.'

Brooks on direct democracy. On the whole, speaking of the working of direct democracy in Switzerland, Brooks says that "it is certain that in Switzerland the initiative and referendum have not caused the break-up of political organizations. On the other hand, they have increased somewhat the influence of minority parties." The

system has become "a vital and free functioning part of the Swiss political organism", and opposition to it has long since ceased to exist in Switzerland.

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THE GOVERNMENT OF THE U. S. S. R.

"Democracy in capitalistic countries where antagonistic classes exist is in the final analysis democracy for the strong, democracy for the propertied minority. Democracy in the U. S. S. R., on the contrary, is democracy for the toilers, that is democracy for all. But from this it follows that the foundations of democracy are violated not by..the New Constitution of the U. S. S. R. but by the Bourgeois constitutions. That is why I think that the constitution of the U. S. S. R. is the only thoroughly consistent democratic constitution in the world."

—(JOSEPH STALIN)

THE UNION of the Socialist Soviet Republics, having an area of 108,070 sq. miles and a population of about 193,200,000[1], has performed, during the last thirty years, a large-scale experiment in an entirely novel type of government, which has been variously interpreted by its admirers and critics. Some have hailed the constitution of the U.S.S.R. as the most democratic in the real sense, while others have denounced it as setting up a new form of tyranny over the dumb millions.

HISTORY OF THE CONSTITUTION

Up to 1917. Russia occupies a peculiar geographical position on account of which she is considered partly European and partly Asian in its culture, institutions and interests. Before the outbreak of the war of 1914-18, Russia was the most autocratically governed country in the world. The Czar was the undisputed head and ruler of the State, whose authority was unlimited and whose very word was law. Early in the nineteenth century an attempt was made by Czar Alexander I, to introduce some reform in the governmental system but Napoleon's invasion of Russia in 1812 seriously interrupted the move. His suc-

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1 The figures relate to the year 1946.

cessor, Czar Alexander II, was a man of liberal views; spurred on by the example of the neighbouring empire of Austria (where the serfs had been emancipated in 1781), he expressed the wish that the nobles should take the work of emancipating the serfs into their own hands. On March 3, 1861, an imperial rescript proclaimed the emancipation of the serfs on private estates and of the domestic slaves. The holdings of the peasants were declared to be their property, and they were required to pay a reasonable sum to their landlords. Three years later, he emancipated the peasants of Poland. His motto was 'Justice, right, and freedom;' and yet he found great adversaries in the Nihilists who would oppose benevolent reforms. They started secret societies, preached terrorism and finally bombed the Czar (13th March, 1881) who was blown to pieces.

First attempt to call the duma. Since then nothing was done in the way of democratising the administration till the disaster of the Russo-Japanese war (1905), when the Government of the Czar lost "its glamour of sanctity and the paternal authority." The Czar attempted to consult popular opinion by organising an elected assembly (the Duma). A widespread rebellion broke out. All attempts of the Czar to please the people by an extension of franchise failed, and he was compelled to issue a manifesto to grant to the population "the immutable guarantees of civil liberty upon the basis of real inviolability of person, of liberty, of conscience, of speech, of assembly, and of association" and "to establish an immutable rule that no law shall become effective without the approval of the Imperial Duma, and that the representatives of the people be granted the right of exercising an effective supervision as to the legality of the acts of the Imperial authorities." The first Duma that met in 1906 demanded direct universal suffrage, complete parliamentary government, expropriation of the landlords, etc. It was dissolved in July. The Second Duma met in March, 1907 and proved equally ineffective.

Czar's authority remained unaltered. Article 4 of the fundamental laws of May, 1906, had declared: "The Emperor of all the Russia wields a supreme autocratic power. To obey his authority, not only through fear, but for the sake of conscience, is ordered by God himself." In such an atmosphere, even the Third Duma of November 1907, failed to achieve any results. All legislative power was exercised, finally, according to the will of the Czar whose government could continue the operation of the previous year's Budget, if in any year the Duma threw out the Ministry's financial proposals. The Execu-

tive was entirely responsible to the Czar, not to the Duma.

So during the Great War, the people of Russia, unable to bear the strain and sufferings caused by the greatest conflict in living memory, rose into rebellion and compelled Emperor Nicholas to abdicate (March 12, 1917).

The Revolution of 1917. In the Great War, Russia was one of the principal Allies against the Central Powers of Europe. She could not, however, continue the fight because of the autocratic and despotic rule at home. The increased demands made for democratising the government met with persistent refusal by the Czar whose vacillation slowly goaded the liberal minded men into rising in revolt. The Czar issued ill-advised decrees, ordering the members of the Duma to go home and the working men in Petrograd to end the strike and resume work, which precipitated the Revolution. The remote causes of the revolution were the starving condition of the millons of Russian peasantry, the rise of democracy in Europe, the sufferings caused by the Russo-Japanese war, and the impatience of the Russian youth. The Duma resisted till Czar Nicholas II abdicated. Within a week, the Czar and all members of his family were made prisoners. The Provisional Government set up by the Duma immediately issued decrees which (*i*) eased the censorship of the press; (*ii*) released large numbers of political and religious prisoners; (*iii*) recognised the right of workmen to unionize and strike; (*iv*) humanised the disciplinary codes in the army and the navy. This government proved short-lived as the Petrograd Soviet instructed the army and the fleet to disregard all instructions of the government which conflicted with the regulations of the Soviet. Consequently, soldiers and sailors set up local revolutionary committees; some men desired to remain loyal to the old regime while others refused to fight at all.

In October 1917, the Bolsheviks held a party meeting and decided on a *coup d' etat*. On November 6 and 7 they seized Petrograd by force and arrested the members of government. The All Russian Congress of Soviets which met on November 7, appointed a new executive committee and an administrative board with Lenin as chairman, Trotsky as commissar for foreign affairs, and Joseph Stalin as the commissar for nationalities. The chief spirit of the new Revolution of November 1917, was Lenin and his ablest lieutenant was Lov Davydovich Brostein, *alias* Leon Trotsky. The cabinet drew up a programme which included: (*i*) immediate conclusion of peace with the Central Powers; (*ii*) quelling of local revolts and combating of the

separatist tendencies; (*iii*) complete revision of the social, political and economic structure of the state so as to establish the dictatorship of the proletariat as a preliminary to an entirely communist government; (*iv*) spreading of the proletarian revolution in the whole world.

Congresses of soviets (run by the Bolshevik Socialists) met in quick succession; the fifth Congress adopted on 10th July, 1918, a constitution for the Russian Socialist Federal Soviet Republic (R. S. F.S. R.) which comprised most of the northern and far eastern parts of the *defunct* Czarist Empire. From 1918 to 1923, several important amendments were made in the constitution, particularly on the admission of new territories as republics, and since 1923 the Union is called the Union of Socialist Soviet Republics (U. S. S. R). The constitution as amended up to 1923, was at once unique and, though very complicated in appearance, it was simple in its working.

The Constitution of U. S. S. R. till 1936. This constitution was of an extremely unique type and made a complete departure from the other constitutions of the world. It was the product of the mass rebellion of 1917, and was thus a reaction to the autocratic regime of the Czar. It put into practice the Socialistic Theory of Karl Marx, making every question a political question, and every worker a State employee. It aimed at a complete suppression of capitalism, and therefore, declared Russia as "a Republic of Soviets of Workers', Soldiers', Peasants', Deputies." In form, the Union was a close federation, that is to say, the powers which were given to the federal authority were very large indeed, and all the chief features of political and economic life of the people were concentrated in the federal machinery and the component units; the seven Republics forming the Union retained autonomy in all local matters, including cultural autonomy. It aimed at the establishment of a Soviet Federation of the whole world. Hence the Union was "not in theory a national unit, but a federation based on the possession of common Socialist institutions and a common social theory," and, on paper at least, it allowed component republics the right of secession, undoubtedly great departure from the accepted concept of a federation.

Rule of the proletariat. The constitution established the Government of the proletariat, hence the franchise was uniform, and [1]"open to all of either sex, excepting persons employing hired labour for profit (this included *Kulaki*) or living on unearned income, monks and

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[1] *Cole: A Guide to Modern Politics*, p. 23.

priests, imbeciles and former agents of the Tsarist regime." Another novel feature of the constitution was the method of indirect election to all the Soviets of the district, the "Government," and the "Central Executive Committee." Direct election was in existence only for the formation of village or factory soviets which had a very narrow jurisdiction. "As a form of organisation for a political party, such a system is not unknown but it is singular as a form of organisation for a State."[1]

The later tendency in the Union was towards greater centralisation which was enforced by insisting on a rigid adherence (in all the units and soviets) to the instructions received from the central organization. The political structure of the U. S. S. R. was novel and widely different from the frames of government in all other States.

Local and provincial governments. The structure of the U. S. S. R. was like a pyramid whose base was the large number of village and factory Soviets and the apex was the Central Executive Committee and the Presidium. The constitution considered the village soviet as the supreme organ of authority within its own competence, and within the boundary of the locality it served all persons of either sex, with the exception of those already described above, enjoyed franchise. The disfranchised class numbered 8,000,000 persons (or about 8 per cent of the total population) who had been denied the right to vote for economic or political considerations.

Soviet political theory considered the vote as not a "right" but merely a social function, and, hence, constituting an effective instrument of protection of the workers' rights. Even foreign workers, resident in the Soviet Union, enjoyed the right to vote. In the year 1931, there were registered 84,000,000 voters out of the told population of 160,009,000. Of the registered voters as many as 71.8 per cent went to the polls in 1931. On an average, about 20 per cent usually went to the polls, and in the rural areas, this percentage was as low as 8 or 9 even though the supporters of the Soviet rule viewed the elections as "the most important school for the political education of the labouring masses," and the voters were constantly urged to participate in the several elections, all agencies including schools, clubs, trade unions, the press, the theatre, the movies and the radio taking a keen interest in training the huge population.

Elections and basis of representation. All details with regard

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[1] *Select Constitutions of the World*, p. 24.

to elections, *e. g.*, place, time and manner of voting were determined by a commission appointed for the purpose by the executive committee of the administrative units concerned. Voting took place not on territorial or regional, but on occupational or professional basis, each factory, or trade union, or collective farm, forming a single electoral college by itself. There was no secret ballot; each voter appeared before the electoral officer and expressed his choice. In case of elections to the village or factory soviet, votes were taken by show of hands in the open. Candidates who received majority of votes were declared elected. Though the soviet constitution was based on the sovereignty of the proletariat, there was considerable inequality in the rights of citizenship (if the value of a vote were the criterion) enjoyed by the worker of the towns and factories and the peasants in the country-side. For every 25,000 persons of the former class there was one representative in the All Union Congress, whereas the village soviets elected one representative for every 125,000 of the population. The difference in the voting rights of workers and peasants was justified on the ground that, during the transition period from capitalism to communism, the class-conscious and politically educated workers must assume leadership over the backward peasant masses. And it was said that when the peasants had acquired the necessary political consciousness the inequality would disappear.

Village and factory soviets. The primary unit of administration was the village or the factory, each having its own soviet entrusted with administration of all important local matters. Villages with a population of less than 300 either governed themselves directly (all adults forming the assembly) or combined in small groups and each such group elected a soviet. Similarly smaller factories employing less than 100 operatives combined together (3 or 4 in each a group) to have a common factory soviet. The factory committee was entrusted with the work of looking after the social life of the factory workers, the factory kitchen, club, housing estate (in case there was one attached to the factory), and, to a great extent, the education of the factory children.[1]

District soviet. Over the village or factory soviet, the next higher administrative unit was the district, consisting of the representatives from the soviets of the villages and factories that composed the district. The representatives to these district soviets were elected not directly

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[1] *A Guide to Modern Politics*, p. 226.

by the village peasants or the factory workers but by the village soviets and factory soviets. Here, therefore, began the system of indirect election which was an important feature of the soviet system of government. The district soviet conducted the administration of all matters of local interest within the district, following at the same time the instructions from above.

Regional soviets. The next higher administrative unit was the "region", consisting of several districts. The representatives that composed the "regional" congress were elected, partly by the various district soviets (another link in the chain of indirect election) and partly by the town and factory soviets, the latter thus acquiring greater importance than village soviets which did not send any direct representatives to regional congress. The functions of these regional congresses were of a higher nature than those of the direct soviets. In each of the seven Union Republics that composed the U. S. S. R., there were several "regions" as local administrations. The regional congress within each Republic elected representatives to the Congress of the Republic. Thus the next higher administration over the "regions" was the Republic.

Autonomous Republics. Seven autonomous Republics composed the Union of Soviet Socialist Republics. In the beginning (1918) there was only the Russian Socialist Federal Soviet Republic, but between 1918 and 1923, six other Republics joined the R. S. F. S. R. to form the Union of Socialist Soviet Republics. Several of these Republics were themselves unions of smaller and independent republics each having a Soviet constitution. The constituent Republics enjoyed a large measure of autonomy in education, public health, full cultural autonomy of speech, writing and printing. Each Republic had, in theory at least, the right to secede from the Union. This was a novel departure which the Soviet Federation made from the prevailing federations.

Government of the Republics. Each Republic had its own congress consisting of the representatives elected by the regional congresses within it. The Republic congress was a very numerous body and met once or twice a year. It elected, from amongst its own members, a central executive committee (having generally legislative and some administrative functions). The central committee of a republic was also a numerous body, meeting generally once in 3 months, and consisting of a few hundred members. It again elected a presidium (a smaller body) which acted on behalf of the committee when the latter was not in session, and a council of people's commissaries con-

sisting of heads of departments within the Republic. The council of people's commissaries might be likened to a cabinet in a modern state, but it had to carry out the instructions received from the presidium of the Republic. Uniformity of administration within the seven Republics was enforced by the members of the Communist Party who formed the bulk of the Republic Congress. Each Republic had a branch of the Supreme Court of the U. S. S. R. and several other smaller courts, which together formed the judiciary of the Republic, over which the Republic had the right to make certain modifications with regard to the application of the code of law which was the same for the whole Union.

The Central Government of U. S. S. R. up to 1936. At the apex of the pyramid of Soviet Government was the Central Government of the Union of Socialist Soviet Republics. The most numerous body of the central administration was the Congress or Soviet of the Union of the Socialist Republics. It was composed of representatives of the town and township soviets on the basis of one Deputy for each 25,000 electors, and of the representatives of the regional soviets on the the basis of one deputy for each 125,000 of the population. The Congress was the supreme authority in the Union. Its strength was nearly 4,000 and it met once a year. It elected the Council of the Union (which formed the legislature of the U. S. S. R.). The Council consisted of 472 members (since March, 1931) elected on the principle of proportional representation of the seven constituent Republics. The Congress also elected a Council of nationalities composed of 138 members "elected on the basis of 5 members for every independent and autonomous republic, and 1 member for every autonomous region." These two bodies together formed what was called the Union Central Executive which, between the sessions of the Congress, acted as the sovereign legislative, administrative, and judicial authority of the U. S. S. R. It met once in three months and during the intervals, its functions were performed by the Presidium, a smaller body consisting of 21 members entrusted with all powers which the Central Executive Committee was entitled to exercise. The Central Executive Committee also elected Union Council of People's Commissaries consisting of 17 heads of departments, which was akin to the British Cabinet. Each of these Commissaries was assisted by two more deputies, and occupied one of the following portfolios: President; Vice-President; Foreign Affairs; War and Marine; Home Supplies; Foreign Trade; Agriculture; Land Transport; Water Transport; Posts and Tele-

graphs; Workers' and Peasants' Inspection; Heavy Industry; Light Industry; Timber Industry; State Farms; Finance; and President of the State Planning Commission. And Stalin was only one of its members.

So that by a zigzag method of indirect elections the Presidium and the People's Commissaries were the elected bodies that actually conducted the central administration of the U. S. S. R. The functions of the Central Government included foreign trade and foreign relations, defence, the direction of national economic policy and internal trade, taxation, labour and labour legislation, besides a general supervision of the Government.[1] In this way was combined extreme centralism of laying down policy with decentralised administrative machinery.

Soviet Judicial System

The U.S.S.R. had a uniform judicial system throughout the seven Republics. The whole system aimed at simplicity and easy access to the population.

In each of the seven Republics the judicial system was generally uniform, subject to minor modifications made by each Republican Congress. Each Republic had one Supreme Court, several regional courts (one for each region) and people's courts.

Lower courts. The people's court was the primary unit of the judicial system; it consisted of a judge and two co-judges (or judge jurors, as they were called), all exercising equal powers. Each co-judge was chosen by the executive committee of the region from the list of persons elected by the village and factory soviets. He served for not more than six consecutive days in each year. The judge was appointed by the regional executive committee for one year.

Each regional court had several judges appointed by the regional executive. It supervised the working of the peoples' courts and also heard appeals from them. It exercised original jurisdiction in higher cases.

Then there was the Supreme Court of the Republic, consisting of judges appointed by the Central Executive Committee of the Republic. The Supreme Court was the highest judicial tribunal for the Republic. It tried "cases referred to it from regional courts," and had

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[1] *A Guide to Modern Politics*, p. 222.

"original jurisdiction over cases of exceptional importance referred to it by the republican central executive committee, the prosecutor of the republic," or those "involving offences in office committed by members of the republican government."[1]

Soviet Law comprised general instructions only which alone were binding and not every letter or word of the law. Severe punishment was inflicted for offences committed against the Soviet Government or for efforts to upset the government. The highest penalty for such offences was death. Comparatively light punishments were awarded for lesser crimes like avoiding work and breaking economic laws. For such offences the offenders were sentenced to imprisonment ranging from one to ten years. "The Soviet judicial system aimed at reforming the criminal and restraining him for life, rather than victimising him aimlessly."

Supreme Court. There was a Supreme Court of the Union, attached to the Central Executive Committee, and not being an independent court like those in other federations. It consisted of a president, a deputy president and thirty judges, all of whom were appointed by the Union Presidium. It was divided into three sections, civil, criminal and military, and examined "cases involving offences committed in office by members of the Union Government; dealt with conflicts between the constituent republics and might appeal against them to the Union Central Executive Committee on the ground that they contradicted the general legislation of the Union or affected the interests of other republics."[2] It also offered opinion to the C. E. C., whenever asked to do so "regarding the constitutional validity of acts and decrees of organs of Union and republican Government." Besides, there were other regular courts of Soviet Union dealing with special questions.

Soviet Constitution Under Revision

It was discovered as a result of the novel experimentation of the Marxian doctrine that the super-ideology of socialism was difficult of translation into practical realism. As a consequence, several amendments were made in the constitution. The following represent the most important of them:

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[1] *New Governments in Europe*, p. 385.

[2] *Ibid.* p. 386.

People of the Far Eastern Provinces, which were the poorest territories of the U. S. S. R., were exempted from taxation (December 11, 1933).

Persons who had run into arrears of grain deliveries were granted exemption (February 27, 1934).

Wages were allowed to be calculated in terms of the quality and quantity of the output of work (March 17, 1934).

Laws regarding strict teaching of civics and giving of political training to the children were modified (April 23, 1934).

System of rations was abolished (November 29, 1934).

Statutes relating to collective farming were revised, and rights of private property widened and extended (February 17, 1934).

Laws made to control homelessness and neglect of children (June 1, 1935).

Laws made to reorganise the educational system and establishment of discipline in schools (September 4, 1935).

Birth restrictions were removed and admission to universities regulated (December 29, 1935).

Legislation was made to make currency more stable (February 29, 1936).

Laws regarding abolition of State subsidies and selling prices in heavy and timber industries were made (April 11, 1936).

Effort to evolve a new constitution. The tendency towards a democratization of the constitution, as evidence by the above changes, culminated in the appointment of a committee in July 1935, including Joseph Stalin as chairman, and among other important members Litvinov, Radek, Vyshinsky, Voroshilov, Molotov, Bukharin, Akulov, Chubar, Zhdanov and Kaganovitch, to frame a new constitution. The Committee laboured for nearly a year and produced the draft constitution which, after confirmation by the Central Executive Committee, was published on June 12, 1936, for eliciting public opinion and inviting suggestions for amendments. It was then considered by the All Soviet Congress and with slight changes passed on December 5, 1936. It was later put into force in 1937.

While introducing the draft constitution for consideration by the Congress, Stalin stated that it proceeded "from the fact of the liquidation of the capitalistic system, from the fact of the victory of the socialist system in the U. S. S. R. The chief basis of the draft of the new constitution of the U. S. S. R. consists of the principles of Social-

ism, of its mainstays which have already been won and realised; socialist ownership of the land, forests, factories, plants and other implements and means of production; abolition of exploitation and the exploiting classes; abolition of poverty for the majority and of luxury for the minority; abolition of unemployment; work and labour as an obligation and a matter of honour of every able-bodied citizen." He declared that it represented a summing up of the path that had been covered, a summary of achievements already won. And, therefore, it was a recording and legislative consolidation of that which had already been attained and won in fact, that is, it put into legal form what had already been achieved.

The New Constitution of 1936

Basis of the Constitution. The constitution opens with the organization of Society (Ch. 1) and declares the U. S. S. R. to be a socialist State of workers and peasants, the political basis of which is formed by the Soviets of the toilers' deputies. "All power in the U. S. S. R. belongs to the toilers of city and village. . ." Socialist ownership has been defined to be one of either State ownership or co-operative farm ownership. All land, minerals, forests, mills, factories, mines, railroads, water and air transport, and all undertakings and institutions are declared to be State property, *i. e.*, the property of the whole people.

Some private property allowed. The land occupied by collective farms is secured to them without payment and for ever. Each collective farm household is allowed for its own use a small piece of land attached to the homestead and the auxiliary economy on this attached piece, a dwelling house, productive livestock, poultry and minor agricultural implements. Small private economy of individual peasants and handicraftsmen, derived from personal labour, but free from exploitation of another's labour is secured by law. Citizens are also guaranteed by law the right of personal property "in the income from their toil and in their savings, in their dwelling house and auxiliary domestic economy, in articles of their domestic economy and use; in articles of personal use and comfort, as well as the right of inheritance of personal property. . . ."

Fundamental rights of citizens. An important feature of the new constitution is the declaration of *Fundamental Rights of the Citizens*, contained in its tenth chapter. The citizens of the U. S. S. R. are

guaranteed (*i*) the right to work, ensured by the socialist organization of national economy, the steady growth of the productive forces of Soviet society, the absence of economic crises, and the abolition of unemployment; (*ii*) the right to rest, ensured by the reduction of the working day to seven hours for the overwhelming majority of the workers, establishment of annual vacations with pay for workers and employees, and provision for a wide net-work of sanatoriums, rest homes, and clubs for the accommodation of the toilers; (*iii*) the right to material security in old age as well as in the event of sickness and loss of capacity to work, ensured by the wide development of social insurance of workers and employees at the expense of the State, free medical aid, and the provision of a wide net-work of health resorts for the use of the toilers; (*iv*) the right to education, ensured by universal compulsory elementary education, free of charge, including higher education, by the system of State stipends for the overwhelming majority of students in higher schools, instruction in schools in the native language and organization of free technical, and agronomic education for the toilers at the factories, State farms, machine and tractor stations and collective farms.

In the enjoyment of rights no distinction is made between different sexes. Women equally with men enjoy the right to work, payment for work, rest, social insurance and education, State protection of the interests of mother and child, granting pregnancy leave with pay, and the provision of a wide net-work of maternity homes, nurseries and kindergartens.

No distinction is made in the rights of citizens on ground of nationality or race, in the fields of economic State, cultural, social and political life.

Freedom of conscience has been granted. Therefore, in the U. S. S. R. the church is separated from the State, and the school from the church.

Citizens are granted freedom of speech, of the press, of assembly and meetings, and of street processions and demonstrations. These are secured by placing at the disposal of toilers and their organisations printing presses, supplies of paper, public building, streets, means of communications, and other material conditions necessary for their exercise.

Inviolability of the person is guaranteed. Hence no one may be subjected to arrest except upon the decision of a court or with the sanction of the prosecutor. Similarly inviolability of homes of citizens

and secrecy of the correspondence are protected by law.

Every citizen is required (*a*) to observe the constitution, to carry out the laws, observe labour discipline, honestly fulfil his social duties, and respect the rules of the Socialist community: (*b*) to safeguard and consolidate public Socialist property as the sacred inviolable foundation of the Soviet system, as the sources of the prosperous cultural life of all the toilers.

Military service is universal because the defence of the Fatherland is the sacred duty of every citizen. Treason to the Fatherland: violation of oath, desertion to the enemy, impairing the military might of the State, espionage for a foreign State, are punishable with the full severity of the law as the most heinous crimes.

Organisation of the Union

Powers of the Central Government. Chapter II of the Constitution deals with the *Organisation of the State*. The Union is based upon a voluntary association of the original eleven Soviet Socialist Republics[1] and five more, added later, all of which enjoy equal rights. Its emblem consists of a sickle and hammer, and the capital is the city of Moscow. According to Article 14, the following powers fall within the jurisdiction of the Union.

> (*a*) the representation of the Union in international relations, the conclusion and satisfaction of treaties with other States and laying down the general procedure in relations between the Union Republics and foreign states;[2]
>
> (*b*) questions of war and peace;
>
> (*c*) the admission of new republics into the organization of the U. S. S. R.;
>
> (*d*) control over the observance of the Constitution of the U. S. S. R. and the ensurance of conformity of the Constitutions of the U. S. S. R.;

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[1] The names of the constituent Republics, their capital towns, area and population have already been mentioned, post p. 6. After the collapse of Polish resistance to German invasion, the eastern half of Poland called Ukraine, was annexed by the U. S. S. R. in September 1939, and formed into a separate unit of the Union. More territorial acquisitions in Finland and of Bessarabia have since been mad e by the U. S. S. R., besides the small Paltic states of Latvia, Lithuania and Estonia. The Republics now number sixteen.

[2] & [3] Amendments of February 1, 1944, empowered the Union Republics to have direct relations with foreign States and to make arrangements for their defence,

(*e*) the approval of the changes of boundaries between Union republics;

(*f*) the approval of the formation of new provinces (karai) and regions (oblast) and also of new autonomous republics within Union republics;

(*g*) the organization of the defence of the U. S. S. R. and also the direction of all the armed forces of the U.S.S.R. and laying down the guiding principles for the organization of military formations of the Union Republics;[3]

(*h*) foreign trade on the basis of a State monopoly;

(*i*) the protection of State security;

(*j*) the establishment of the plans of national economy of the U. S. S. R.;

(*k*) the approval of single State budget of the U.S.S.R., and also of the taxes and revenues which serve to form budget of the Union republics and localities;

(*l*) the administration of banks, industrial and agricultural establishments and enterprises and also trading enterprises of All-Union significance;

(*m*) the administration of transport and communication;

(*n*) the direction of the monetary and credit system;

(*o*) the organization of State insurance;

(*p*) the contracting and granting of loans ;

(*q*) the establishment of basic principles for the use of land and also for the use of its contents, as well as of forests, and waters;

(*r*) the establishment of basic principles in the field of education and the public health;

(*s*) the organization of the single system of national economic accounting;

(*t*) the establishment of the bases of legislation on toil;

(*u*) the legislation on the judicial structure and judicial procedure; criminal and civil codes;

(*v*) laws on the Union citizenship; laws on the rights of foreigners;

(*w*) the issuing of All-Union acts of amnesty.

All powers other than those mentioned in Article 14 belong to the Republics of the Union, and the U. S. S. R. protects their sovereignty. The constitution of each of the constituent Republics is separate based on the special features of the Republic "and is drawn up in confor-

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[3] Bylorussia and Ukraine are the two Union Republics which are conducting their foreign relations directly and are separate members of the United Nations, along with the U. S. S. R.

mity with the constitution of the U. S. S. R." Each Republic retains, in theory, the right to withdraw from the U. S. S. R. The territory of a Republic cannot be changed without its own consent.

The constitution sets up a federal citizenship for the whole Union. All Union laws are enforceable throughout the Union territory, and in case of conflict between a Union law and the law of any Union Republic, the former prevails.

The R. S. F. S. R., the Ukranian S. S. R., Azerbaijan S. S. R., and the Georgian S. S. R. contain several autonomous republics, provinces, regions, and autonomous regions (Arts. 22-25), and each of the Uzbek S. S. R., the Tadjik S. S. R., and the Kazakh S. S. R., contains one or more regions. The remaining constituent Republics contain no provinces or regions or autonomous republics.

Structure of the Union Government

Supreme Council. The highest organ of state power in the U. S. S. R. is the Supreme Council which exercises exclusively all the legislative power, in accordance with Article 14, without, however, interfering with the competent powers of the Presidium, the Council of People's Commissars and the People's Commissariats, of the U. S. S. R. The Supreme Council is bicameral consisting of the Council (Soviet) of the Union and the Council (Soviet) of Nationalities.

The Legislature

Lower chamber of the legislature. The Council of the Union is the popular (or lower) chamber representative of the people, directly elected by citizens on the basis of one representative for every 300,000 of the population. For this purpose the Union territory is divided into electoral districts.

Directly elected by the people. The election is made by the direct process, "all citizens of the U. S. S. R., who have reached the age of eighteen, irrespective of racial and national affiliations, confession of faith, educational rank, domicile, social origin, property status and past activity, have the right to take part in the election of deputies and to be elected, with the exception of the insane and persons condemned by a court to be deprived of electoral rights." Every citizen has one vote; women can elect and be elected on the

same basis as men. Even citizens serving in the Red Army can vote or seek election; voting is by secret ballot. Candidates seeking election are nominated, in the electoral districts, by public organisations and societies of toilers, the Communist Party organisations, professional unions, co-operative societies, organisations of youth and cultural societies. The Council is elected for a four year term. A deputy has to render account of his work to his constituents and can at any time be recalled on the decision of the majority of electors in the manner established by law.

This system of election has made a great improvement upon the system in vogue till 1936.

The first elections, under the new constitution, to the Council were held on December 12, 1937, when 91,113,153 voters went to the polls. In the elections held on 12th February, 1946, the number of electors that actually went to the polls was 101,717,686. In all 682 deputies were elected. At present the Council (in 1958) consists of 700 members elected on the basis of 1 deputy for 300,000 of the population. The representatives elected to the Council came from all parts of the Union including among them the Eskimos of the North and Caucasians of the South, speaking over one hundred languages and differing widely also in their manners and customs due to variety of geographical and cultural conditions of that vast country.

The upper chamber of the legislature. The Council (Soviet) of Nationalities, the upper house, is also directly elected by the citizens of the Union and Autonomous Republics, autonomous regions, and national districts, on the basis of 25 deputies for each Union republic, 11 for each Autonomous Region, 5 for each autonomous district, and one for each national district. It is elected simultaneously with the council of the Union for a four year term, and by the same process of elections. In 1954 it consisted of 631 members.

How the legislature works. Each chamber controls its own procedure, elects its chairman and two vice-chairmen; and examines the credentials of its members. The two chambers possess co-equal legislative power, including the right to initiate legislative measure. A law is considered to have been passed when it has been accepted by each chamber by a simple majority. It is then published in the languages of the Union Republics, over the signature of the chairman and secretary of the Presidium of the Supreme Council.

Conflicts between the two chambers: how resolved. In case of disagreement between the two chambers over a legislative

measure, the question is referred to a conciliation commission established on a party basis. If the conciliation commission fails to arrive at an agreed solution, or in case its decision is unacceptable to any chamber a second opportunity is offered to the chambers to consider the question. In case there is again a disagreement, the Supreme Council is dissolved and general elections ordered.

Joint sessions of the two chambers are held (presided over alternately by the Chairmen of the Council of the Union and Council of Nationalities) for electing the Presidium of the Supreme Council and the Council of People's Commissars of the U. S. S. R. Sessions of the Supreme Council are held twice a year but extraordinary sessions may be convened by the Presidium either on its own initiative or on a demand by one of the Union republics.

Elections to Supreme Council must be held within two months of the expiry of its term of four years, or of its premature dissolution, and the new Supreme Council must meet within a month of the elections.

The Executive

The Presidium: its functions. The Presidium of the Supreme Council consists of 33 members formed thus: the Chairman, 16 vice-Chairmen (the chairmen of 16 republics), 15 members and the secretary. It is accountable to the Council for all its activities. According to Article 49, this Presidium: '(*a*) convenes sessions of the Supreme Council of the U. S. S. R.; (*b*) gives the interpretations of the laws of the U. S. S. R. in force, issues decrees; (*c*) dissolves the Supreme Council and orders new elections; (*d*) orders and carries out referendum of the whole people on its own initiative or on the demand of one of the Union republics; (*e*) annuls the decisions and orders of the Council of Ministers, of the U. S. S. R. or of the Union republics, when they do not conform to the law; (*f*) in the period between sessions of the Supreme Council of the Union, carries out the functions of the Council and appoints individual People's Commissars of the Union at the suggestion of the chairman of the Council of Ministers, and subject to subsequent confirmation by the Supreme Council; (*g*) bestows distinctions and titles of honour; (*h*) exercises the right of pardon; (*i*) appoints and removes the high command of the armed forces of the Union; (*j*) when the Supreme Council is not in session, proclaims a state of war in case of armed attack on the Union or in case of necessity of carrying out international treaty obligations for

mutual defence against aggression; (*k*) proclaims general or partial mobilisation; (*l*) ratifies international treaties; (*m*) appoints and recalls plenipotentiary representatives of the U. S. S. R. in other states; (*n*) receives letters of credence and recall of diplomatic representatives of foreign states accredited to it.'

Thus the Presidium exercises all powers usually belonging to heads of states and also some of the powers exercised by cabinets in other countries.

Council of Ministers: its functions. The highest executive and administrative power of the U. S. S. R. is vested in the Council (Soviet) of Ministers of the U. S. S. R.[1] It is responsible to the Supreme Council of the U. S. S. R. and accountable to it, and when the Supreme Council is not in session, to the Presidium of the Supreme Council. On the basis, and in pursuance, of the laws in force, the Council of Ministers publishes decisions and orders (which are binding throughout the territory of the U. S. S. R.) and supervises their execution. According to Article 64 of the constitution, the functions of the Council of Ministers are: (*i*) to coordinate and direct the work of the All Union and Union Republics Ministers of the U. S. S. R., and other economic and cultural institutions within its jurisdiction; (*ii*) to adopt measures to enforce the plan of national economy, the state's budget, and to strengthen the monetary system (*iii*) to maintain public order, defend the interests of the state and protect the rights of citizens; (*iv*) to conduct and direct the foreign relations of the U. S. S. R., (*v*) to direct the general organization of the Union armed forces and to determine the yearly period of the citizens' quota of military service; (*vi*) to institute, when necessary, special committees to deal with matters of economic, cultural or defence character.

It can also suspend decisions and orders of the Councils of Ministers of the Union Republics and also annul the latter's ordinances and instructions in those branches of administration and economics which are included within the jurisdiction of the U. S. S. R.

Its composition. It is formed by the Supreme Council of the U. S. S. R. and consists of: the Chairman of the Council (Soviet) of Ministers of the U. S. S. R.; the Vice-Chairman of the Council (Soviet) of Ministers of the U. S. S. R.; the Chairman of the State Planning Commission of the U. S. S. R.; the Chairman of the Commission of Soviet Control; the Ministers of the U. S. S. R.; the Chairman

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[1] It was called the Council of People's Commissars till 16 March, 1946.

of the the Committee of Reserves (warehouses); the Chairman of the Committee on the arts; the Chairman of the Committee on higher education.

The total strength of the Council of Ministers of the Union, as formed on January 19, 1938, was twenty-eight.

How it works. The Government of the U. S. S. R. can be interrogated in either Chamber, and the Minister concerned must give an answer (oral or written) within three days of the interrogation. The different Ministers are to direct the branches of State administration falling within their competence. They issue orders and instructions regarding the departments in their charge and supervise their execution, subject only to the restrictions placed on them by the Union laws or decisions and orders to the Council of Ministers.

There are eight All Union People's Commissariats (departments of administration) of the U. S. S. R., *viz.*, Armed forces, Foreign Affairs, Foreign Trade, Railways, Communications, Water Transport, Heavy Industry, and Defence Industry.

The Judiciary in the U. S. S. R.

The judicial system of the U. S. S. R. is uniform throughout the Union. The highest court of justice is the Supreme Court of the U. S. S. R., and the other courts below it are the Supreme Courts of the Union Republics, provincial and regional courts, Courts of Autonomous republics and autonomous regions, district courts, special Courts of the U. S. S. R. (established by the Supreme Council of the U. S. S. R.), and People's Courts.

The Supreme Court. The Supreme Court of the U. S. S. R., supervises the judicial activity of all the judicial organs of the Union and Union Republics. Its judges as well as those of the special courts constituted by the Supreme Council are elected by the Supreme Council of the U. S. S. R. for a term of five years.

Similarly the Supreme Courts of the Union Republics are elected for five years by the Supreme Council of each Union Republic. Each Autonomous republic[1] too has its own Supreme Court elected by its Supreme Council for a five-year term.

Other courts. Provincial, and regional soviets or the soviets of toilers' deputies of the autonomous regions elect the provincial and

[1] Union Republic is different from an Autonomous Republic.

regional courts, courts of autonomous regions, and district courts, each for a term of five years.

The People's Courts are elected directly by the citizens of a *rayon*, all citizens voting secretly and with equal rights. These courts have a three-year term.

The proceedings in the various courts are held in the language of the territory concerned. But in case of persons unacquainted with that language, an interpreter is provided, besides allowing them to address the court in their own language. The proceedings in all courts are open; the accused enjoy full right of defence; people's assessors are attached to all cases except those specifically mentioned by law. All judges are independent, subject only to law.

Each Supreme Council (of the All Union, of the Union republic, of the autonomous region, etc.) appoints a Procurator whose primary duty is to supervise the execution of the laws by all People's Ministries and institutions responsible to it. All Procurators are subject only to the Procurator-General of the U. S. S. R., but otherwise they work independently.

Governments of the Units

The following table gives the names with capital towns in brackets, area, and population of the sixteen republics that form the units of the Union of Socialist Soviet Republics:

Constituent Republic with capital.	Area in sq. miles (Jan. 1, 1936); Does not include territories incorporated in 1940 and 1945	Population (Jan. 17, 1939).
R. S. F. S. R. (Moscow) ..	6,368,768	109,279,000
Ukrainian S. S. R. (Kiev) ..	170,998	38,500,000
Bylorussian S. S. R. (Minsk) ..	49,022	10,400,000
Azerbaijan S. S. R. (Baku) ..	32,956	3,209,727
Georgian S. S. R. (Tiflis) ..	26,865	3,542,289
Armenian S. S. R. (Erivan) ..	11,580	1,281,599
Turkmen S. S. R. (Ashkhabad) ..	171,384	1,253,985
Uzbek S. S. R. (Tashkent) ..	66,392	6,282,446
Tadzhik S. S. R. (Stalinabad) ..	55,040	1,485,091
Kazakh S. S. R. (Alma-Ata) ..	1,047,797	6,145,937
Kirghiz S. S. R. (Frunze) ..	75,926	1,459,301
Estonian S. S. R. (Tallin) ..	18,000	1,120,000
Lithuanian S. S. R. (Vilinius) ..	21,500	2,879,070
Latvia S. S. R. (Riga) ..	25,000	1,950,000
Karelo Finnish S. S. R. (Petrolavodsk) ..	19,000	900,000
Moldavia S. S. R (Kishinev) ..	33,800	2,200,000
Total for the U. S. S. R. ..	8,179,228	191,888,445

The Constitution of 1936 describes the organization, powers and functions of state, powers of the Union republics as well as of the Autonomous republics. The sixteen Union Republics are the direct units of the Union, but many of them contain a few Autonomous republics and are thus themselves federations within a federation. The organization of government in all these units and sub-units is based upon the principles underlying the government of the U. S. S. R.

Legislatures of Units. Each Union Republic has a Supreme Council (Soviet) of its own, elected directly by the citizens for a term of four years. It is the sole legislature of the republic. Its functions include: (*a*) adoption of the constitution of the republic and amending it according to Article 16 of the Constitution of the U. S. S. R., (*b*) approving the constitution of the Autonomous republics, if any, in its territory and defining the boundaries of their jurisdiction; (*c*) approving the plan of national economy and the budget of the republic; (*d*) exercising the right of amnesty and of pardon in case of persons sentenced by the judicial organs of the Union Republic.

The Supreme Council (Soviet) of every Union Republic elects its own chairman and a vice-chairman to conduct its meetings; forms its own Presidium, consisting of the chairman of that Presidium, vice-chairman, the secretary of the Presidium, and its other members; it also forms the Council (Soviet) of Ministers of the Union Republic, which is the Government of the Union Republic.

Executives of Units. The highest executive and administrative organ of each Union Republic is the Council of Ministers of that republic. The eleven Commissariats (departments) under its charge are those of Food Industry, Light Industry, Timber Industry, Agriculture, Grain and Livestock, State farms, Finances, Internal Trade, Internal Affairs, Justice, and Public Health, military organisation and foreign affairs. The council of Ministers of the Union Republic is responsible to the Supreme Council of the republic; it performs the latter's functions between its sessions and at that time it is accountable to the Presidium of the Republic.

The Council of Ministers of a Union Republic consists of the chairman of the Council of Ministers of the Union Republic; the Vice-Chairman; the Chairman of the State Planning Commission; the Ministers (15 in number, of Food industry, Light industry; Timber industry; Agriculture; Grain and livestock—State farms; Finances; Internal trade, Internal affairs; Justice; Preservation of health; Education; Local industry; Communal economy; Social security; defence

and foreign affairs); a Delegate of the Committee on reserves; the chief of the Administration of the arts; delegate of the All Union Ministries.

The Ministers direct the administration of the various departments in their charge, and issue orders and instructions on the basis and in execution of the laws of the U. S. S. R. and the Union Republic. They carry out the orders and instructions of the Ministers of the U. S. S. R. and of the Commissariats of the Union Republic.

The Council (Soviet) of the Ministers of the Union Republic can suspend and annul the decisions of the Ministers of the Autonomous republics, and of the executive committees of the various soviets of the provinces, regions, and the autonomous regions, within the territory of the Union Republic.

By amendments, passed by the Supreme Soviet of the U. S. S. R. on February 1, 1944, the Union Republics have been empowered to have their own military organisations for their defence and to make their own arrangements for regulating relations with foreign states, subject, however, to general guiding principles laid down by the Supreme Soviet for the purpose.

The Autonomous Soviet Socialist Republics are sub-units of the Union Republics. Each of the Autonomous Soviet Socialist Republics (A. S. S. R.) has a Supreme Council (Soviet) of the A. S. S. R. which is the highest organ of State powers within its territory. It is elected by the citizens of the A. S. S. R. for a term of four years.

Each A. S. S. R. has its own constitution which takes into account the special features of its territory, and is drawn up in general accordance with the constitution of the Union Republic. The Supreme Council of the A. S. S. R. elects a Presidium and a Council of Ministers of the A. S. S. R.

There are provinces, regions, autonomous regions (in most of the Union Republics) and A. S. S. R., and autonomous regions, districts, rayons, cities, rural areas (in all Union Republics), each of which has its own council (Soviet) consisting of the deputies elected by the toilers for a two-year term. These soviets of the various territories ensure the maintenance of State order, observance of laws, and the protection of the rights of citizens. They look after the locality and establish the local budget. They are responsible both to the superior soviets (of the next higher territories) and to the toilers who elect them.

The Communist Party

The Soviet system of government, described above, is run mainly

by the Communist Party which is for all purposes the carrier of government. Yet the party and the government must not be confused together, the one being different from the other, despite the obliteration of distinction since 1934.

Non-racial party. The Communist Party is open to any one belonging to any nationality, because the principles of communism have no place for narrow nationalism and aim at the establishment of the rule by the proletariat all the world over. Communism does not, in its fundamental concept, recognise political frontiers, but seeks to organise the workers in the whole world. And yet admission to the Communist Party is an extremely difficult affair; a prospective candidate has to undergo a training period on completion of which he is admitted to the party if recommended by important and known members. On the other hand, it is very easy to leave the party; one has just to express one's desire. From time to time the party is purged of the non-enthusiastic or insincere members who have either lost faith in the principles and practice of communism or have been suspected of disloyalty to the party.

Membership of the party. The total membership of the party in the beginning of 1938 was estimated at less than 3 millions including members and probationers. The recruitment to the party is made from amongst the *Komsomol* comprising of young men and women between the ages of sixteen and twenty-three years, who are undergoing training. Those whose ages range from ten to sixteen years are called Pioneers and below these are *Octibarists,* consisting of children between the ages of eight and ten. Thus the system consisting of the party and the three under-associations may be likened to the scout organisation wherein there are definite stages to pass through before being admitted as a fullfledged member. The total strength of the Communist Party and the under societies is over twelve millions.

Party discipline. Strict party discipline is rigidly observed. Every member or candidate has to subordinate all his personal feelings to the welfare of the party; each is at the disposal of the superior whose orders have to be implicitly obeyed. A member has to go wherever he may be sent, and he has to devote all his spare time to spreading the principles of communism and defend the same even if it entails sacrifice of his own life. Nearly 14% of the members are women and girls.

Aims of communism. Communism aims at giving a practical shape to Marxian doctrines; abolition of class distinctions; basing

political and social rights on one's personal labour; abolition of capitalism and its replacement by state control of all means of production and distribution; abolition of religion. Whosoever is found guilty of drunkenness, disobedience to superior authority in the party, attending church service, want of zeal in propagating party gospel, or giving any kind of help to "bourgeois" class is dismissed from the party. On the other hand, those who distinguish themselves by greater devotion to party, turning out of more than normal work, or literary activity are specially rewarded. Officials of the party are entitled to travelling allowances, residential quarters and the use of automobiles. In theory, at any rate, equality in treatment is emphasized. In practice, however, the officials in charge of factories and farms enjoy greater privileges ensured by the distribution of extra-profit. The account given of the practical working of the communistic doctrines in Soviet Russia are conflicting, due largely to the predilections of the visitors and writers. Human nature being what it is, it is impossible to expect perfect adherence to an ideal, in practice. However, the network of organizations of the party in the U. S. S. R. is an attempt to control the administration.

Organization of the party. The primary unit of the Party is the "cell" (*yacheika*) which contains at least three members and may be formed in a village or factory. The cell carries out the policy of the central party by means of propaganda. "Of a total of 39,321 party cells in 1928, 25.4 per cent were formed in factories, 52.7 in villages, 18.5 in offices and enterprises, and 1.8 in educational institutions." The cells elect delegates to the party organ of the division. The provincial and regional organs of the party elect delegates to the All Union Party Congress. The Congress meets once in two years. During the intervals a Central Executive, elected by the Congress, conducts the work. The most important official of the Central Committee is the Secretary General (at present Khrushchev occupies that office) who controls not only the Party but also the Government since the demotion of N. Bulganin. Though the Party and the Government were formerly distinct institutions, the former virtually controlled the latter. And the seventh Congress held in the beginning of 1934 resolved to obliterate the outward distinctions between the Party and the Government.

Though within the Party there is freedom of discussion and expression of views, once a decision is taken it becomes binding on the members. Whosoever tries to flout Party directions is expelled or

otherwise punished. Generally speaking, a member of the Communist Party must be prepared "to put himself at the service of the State," by doing all sorts of works required of him. The various branches of the Party spread over the Union keep strict vigilance over the working of the Soviets and thus enforce the instructions received from the centre. As the most important organs of the Government till 1936 were those in the upper layers of the pyramid, the Communists cared to have more of themselves elected to those Soviets, and in villages and factories they contented with candidates put up by them but not necessarily being registered members of the Party.

Our Party Government the Goal. As the real policy of the Government was dictated from above, the Communists have a full control over the Government. The Communist Party is thus the driving and directing force of new Russia. Even where Communists are not in direct control, there is Communist influence, as in the famous "Red Triangle" to be found in all factories, whereby a representative of the Communist Party sits with a representative of the factory committee and with the manager to determine factory policy."[1]

On coming into power, the Communist Party started on the various economic programmes, which were considered as parts of the politico-economic system contained in the constitution of the U. S. S. R. In the process, conflicts arose between Stalin and Trotsky, after Lenin's death, each of whom claimed to represent the correct view of Leninism. The final triumph of Stalin and the consequent expulsion of Trotsky led to the secret plots against Stalin's administration which ruthlessly put down all opposition to itself by inflicting the heaviest penalties on those who were found involved, or who were made to confess their participation in the plots. The death of Stalin led to internal struggle in the Politbureau for political power. The election of Malenkov, then of Bulganin and finally of Khrushchev as premier of the U. S. S. R. introduced a new concept of power politics in the Communist world. The de-Stalinisation policy and the consequent rejection of the cult of individuality brought about rapid changes in the party leadership and programme.

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21

THE GOVERNMENT OF NAZI GERMANY

"All people of German blood, whether they live under Danish, Polish, Czech, Italian or French rule, must he united in the German Reich.....We will not renounce a single German in Sudeten, in Alsace-Lorraine, in Poland, in the League of Nations colony Austria or in the succession States of old Austria."

—GOTTFRIED FEDER

* * *

"Germany must be given a position appropriate to a nation which would normally be regarded as the most powerful single state in Europe." (*Lord Lothian*, in the House of Lords, May 1, 1935).

THE THIRD Reich, consisting of the territories immediately after the *Anschluss* with Austria, covered an area of 214,068 square miles with a population numbering 72,790,724. It was the most central of the European States and thus occupied an important position on the Continent. Germany had passed through several polical upheavals which had given her an entirely new character, till she became a dictatorship of the most militant type. It is necessary, for an intelligent understanding of the political institutions of Nazi Germany, to read back the constitutional history of the Bismarckian Empire and the Weimar Republic.

CONSTITUTIONAL HISTORY

Till the mid-nineteenth century. The wave of the French Revolution, that swept over the whole of Europe, effected great changes in Germany. The German Confederacy, built upon the ruins of feudalism, suffered a loss when Napoleon drove a wedge into its heart and created the Confederacy of the Rhine, consisting of Wurtemberg and Baden which were, till then, members of the former Confederacy. This act of his, aroused the spirit of German nationalism, though unconsciously, and in 1813 "the rise of Germany broke the Confederacy

of the Rhine." After the Congress of Vienna (1815), a German Confederation[1] of thirty-nine states, large as well as small, was formed, in which presidency went to Austria and vice-presidency to Prussia. In the following years, the power of Prussia increased. The liberal party in Germany grew in strength, and the political convulsions of 1841-49 in Europe exercised profound influence on German politics.

Later XIX century and the advent of Bismarck. About this time, the advent of Bismarck changed the whole course of politics in Central Europe. "He foresaw the formation of a German nation only in the strengthening of the Prussian power and the exclusion of Austria."[2] This policy at once met with the approval of King Wilhelm of Prussia, who then appointed Bismarck as president of the Prussian Council. The Iron Chancellor followed his policy of blood and iron and quarrelled with Austria over the question of disposition of the territory wrested from Denmark. In 1866, he declared war against Austria, defeated her and drove her out of the Confederation.

The first Reich. In this way Prussia gained undisputed hegemony inside the German Confederation which was renamed the "German Empire" or German Reich. In 1871, a constitution was drawn up for the Reich. The lower house, called the Reichstag, consisted of 397 members of whom 235 went to Prussia, and the remaining distributed between the other members of the Reich. These members were elected by universal suffrage for a term of five years, the Emperor having the right to dissolve the house earlier. The upper house, called the Bundesrath, consisted of 58 members of whom Prussia got as many as 17. "The members were more or less delegates of the different states and voted according to the instructions of their governments, hence all the delegates of a state had to cast their votes similarly on the same question."[3] Fourteen negative votes could defeat a measure and as Prussia alone commanded 17 votes, she virtually exercised the right of veto, particularly because inside the Reich the real power was exercised by the Bundesrath and not by the Reichstag. The Bundesrath was an "extraordinary mixture of legislative chamber, executive council,

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1 "This was not properly a federal union, but rather a perpetual international alliance, the States remaining separate and independent, except for matters affecting the external safety of Germany."
Government and Parties in Continental Europe, Vol. 1. p. 234.

2 *Federal Polity*, pp. 60-61.

3 *Ibid.* p. 62.

court of appeal, and permanent assembly of diplomats." It could dissolve the Reichstag, and order the forces of the Empire to subdue a recalcitrant state.

Position of the Emperor in the Reich. The chief executive power of the Reich lay in the hands of the Emperor who was the same person as the King of Prussia. "He was Commander-in-Chief of the Imperial army; he could wage war and conclude peace. He represented the Empire in all international affairs. He summoned the Legislature and dissolved it; he promulgated all laws. As King of Prussia he exercised great powers. In this capacity he could veto legislative measures by instructing the 17 Prussian members of the Bundesrath to cast their votes in a particular way; he appointed the Imperial Chancellor."[1]

The Chancellor. The only Federal Officer was the Chancellor. He was responsible not to the legislature but to the Emperor. He was necessarily the chief minister of Prussia and adviser of the Prussian King, that is, the same person as the Emperor. "The powers of the German Chancellor in Bismarck's time were greater than those of any other man in the world...."[2] He had no cabinet but only a number of subordinates. He presided in the Bundesrath, and took an active part in the debates in the Reichstag.

Its Judiciary. The Judiciary of the Empire consisted of the courts of the several states, and their organization and procedure were determined by the laws and statutes of the Empire. The judges were appointed by the local sovereigns.

A peculiar federal state. To sum up, the German Empire was a federal state, if we can use this term, of a peculiar type. "The member states had no equality of status whether in the counsels of the Empire or in their internal administration, Prussia overshadowing all, and the bigger states having derived special privileges by joining the confederation at a later date. The states did not enjoy democratic constitutions so very essential to the stability and smooth working of a federation. There was a strong legislative centralisation in the Empire with an executive decentralisation. The Central Government could legislate on all matters on which the U. S. A. Congress can, and on many more that clearly fall within the jurisdiction of the states in the U. S. A. But all these were executed by the officers of the states....The empire did

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[1] *Ibid.* p. 63.

[2] Lowell, *Governments and Parties in Continental Europe*, vol. 1. p. 279.

not exercise direct authority over the whole population; but over the local princes and free cities."[1] The greatest defect was, undoubtedly, the too great power that Prussia enjoyed. She held the Imperial Crown, the Chancellory, and, through her 17 votes in the Bundesrath, veto over legislation. After her came some of the other states like Saxony and Bavaria, which had extracted special privileges as the price of their membership, and then followed the small principalities and free cities with insignificant powers, so that, as Lowell remarks, "the compact could not fail to resemble that between a lion, half a dozen foxes and a score of mice."

The War of 1914-18 and fall of the Reich. Such a constitution was unsuited to the democratic ideals of the twentieth century. "The stress of war made it inevitable that the Government of the Reich should be dependent on public confidence, and this meant, in effect, the practical adoption of responsible government."[2] A committee of the Reich was appointed, 1917, to examine the question, and before it could do anything, Germany witnessed the collapse of her military organisation in the field. On 30th September, 1918, the Kaiser issued the memorable declaration: "I desire that the German people shall co-operate more effectually than hitherto in the determination of the destinies of the Fatherland. To that end it is my will that men in whom the people repose their confidence shall share to the widest extent in the rights and duties of the Government."[3] The war was, however, drawing to a close; at any rate, German army was being demoralised and the makeshift arrangements proved ineffective. In November, 1918, there was revolution in Germany. The Kaiser abdicated, and the Crown Prince, too, renounced his claim to the throne. Workers' and Soldiers' Councils were rapidly formed throughout the country. On November 10, the Great Berlin Workers' and Soldiers' Council elected an Executive Committee, consisting of three majority and three minority Socialists who then formed the Provisional Government. But between the Council and the Provisional Government serious conflict soon arose, when the latter convened a Constituent Assembly, consisting of delegates of the various states to draw up a constitution. Truce had till then been declared and negotiations for peace with the Allies started. The terms offered by the victors were too exacting, but

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[1] *Federal Polity*, pp. 63-64.
[2] *Select Constitutions of the World*, p. 173.
[3] *Ibid.*

in the circumstances then prevailing in Germany, they had to be accepted, though not without a protest.

The making of a Republic. The 421 delegates to the Assembly having been elected by universal suffrage on January 19, 1919, on the basis of proportional representation, the Assembly met at Weimar (the place chosen to enable the Assembly to work in a peaceful atmosphere, away from the revolution in Berlin) on February 6. The Provisional Government had already appointed Dr. Hugo Preuss, the Secretary of State for the Interior, to draw up a Reich Constitution. A Jew by faith, a democrat and liberal by temperament, and a Professor of Constitutional law by profession, Dr. Preuss had gained considerable practical experience in the Berlin County Council; his studies, outside Berlin University, had given him "an almost unrivalled comprehension of political principles and machinery, enriched by study of Continental, English and American democracies."[1] He lost no time in reading the situation and producing a draft of a federal constitution which began thus: "The German Reich consists of its member states and the territories (*Gebieten*) whose populations desire admission into the Reich by virtue of their right of self-determination and who are admitted by a law of the Reich."[2] Sovereignty, it was asserted, belongs to the people, therefore fundamental Rights of the people were clearly defined. This draft was debated upon at length by the Assembly, and in its revised form it became the constitution of the new German Republic, having been adopted by it on 31st July, 1919, by 262 votes against 75. The Assembly, by a resolution, constituted itself as the first Reichstag and the constitution was put into force on 31st August, 1919.

The Second Reich

The Constitution of Weimar (1919). Curiously, the constitution, though establishing a republic in Germany, gave the state the name "Reich" (meaning an Empire). It recognised the sovereignty of the people in the Preamble itself, which stated: "The German people, united in every branch and inspired by the determination to renew and establish its realm in freedom and justice, to be of service to the cause of peace at home and abroad, and to further social pro-

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[1] Finer, *Theory and Practice of Modern Government*, vol. 1. p. 335.

[2] *Ibid.* p. 355.

gress, has given itself this Constitution."

Monarchy destroyed and republican institutions established. This sovereignty of the people was further made clear in Art. I which stated: "The German Reich is a Republic. All state authority emanates from the people." Thus, this constitution was a great improvement upon that of Imperial Germany, which had set up a confederation of the states without any reference to the people. Other important features of the constitution of 1919, which distinguished it from its predecessor, may be summarised thus: It destroyed monarchical governments in all the units within the federation, and established in their place republican institutions based upon the will of the people. It was federal in character, and destroyed the old supremacy of the states within the Empire. The power of Prussia was considerably curbed. When the constitution was being framed, the delegates from the Rhineland had insisted on the dismemberment of Prussia whose power had been too preponderant in the Empire, but these separatist tendencies were, for a time, kept in check, and a provision was made in the new constitution to allow the making of territorial changes under certain conditions. The central government was made very strong, and the federation very much resembled a unitary state. This enabled Germany, even in the aftermath of the greatest war in history, to emerge as a powerful and united nation, to allow, later on, a dictatorship to be established under Hitler in 1933. People were allowed to exercise direct voice even in the election of the Chief Executive, the President of the Reich, and also in the amendment of the constitution, through Referendum and Initiative. Fundamental Rights of the people were constitutionally recognised, *e. g.*, equality of all Germans before the law, abolition of titles, and privileges or disadvantages of birth or rank; freedom of movement; free racial and linguistic development, security of property; secrecy of private correspondence, freedom of expression of opinion and peaceful assembly; eligibility to all the highest offices in the state; freedom of conscience and profession; and compulsory and free education of a very high standard.

Economic aspects. The most unique feature of the Republican Constitution was the recognition of the importance of economic life of the people, and Section V contained fifteen clauses in that regard. State control over natural resources, and labour laws were provided; rights of discoveries and intellectual work were placed under the care of the Reich. Professional unions were allowed to be formed. A

comprehensive system of insurance for the maintenance of health and fitness for work, the protection of motherhood and provision for the economic consequences of old age, infirmity, and the vicissitudes of life was created. Workers' Councils were instituted to co-operate with the state in matters connected with the welfare of workers and salaried employees.

The division of powers. In other respects the distinction between the old Imperial constitution and the new Republican constitution was clear and fundamental as in the distribution of powers between the central and the state governments. In Imperial Germany, the states had large powers and some of the bigger ones enjoyed special privileges; all these distinctions were abolished. "The competence of the Federal authority was very much extended, until the independent activity of the States was almost entirely at its mercy—legally. Firstly both the Reich and the States were subject to the *Fundamental Rights* of the Second Part of the Constitution, and many of these were regulated by Federal law, for example, administrative jurisdiction, the law of property, and so on. Secondly, the Federation received Powers of two kinds: Exclusive and Concurrent, and both made lists of formidable scope, so intricate, also, that there was less clarity of distinction between Federal and State functions in this than in any other Federal Constitution and this largely through the Concurrent Powers."[1]

Legislative powers of the Central Government. Under Article 6, the Reich exercised exclusive legislative power as regards foreign relations, colonial affairs; nationality, freedom of domicile; immigration and emigration, and extradition; military organization; the monetary system, customs and freedom of commercial intercourse; posts and telegraphs including telephones. It had also legislative power (Art. 7) regarding 'civic rights; penal law, passports and the police supervision of foreigners; poor relief and vagrancy; judicial procedure; population questions and the care of motherhood, infants, children and young persons; labour laws and public health; law of expropriation; trade in food-stuffs; commerce, weights and measures; industry and mining insurance; navigation; railways; and cinemas and theatres'. It could also issue uniform regulations regarding sanitary administration and the maintenance of public order and security, (Art. 9). It could make laws as regards taxes and other revenues in so

[1] *Theory and Practice of Modern Government*, vol. I. pp. 361-62.

far as they were appropriated wholly or in part to its purposes, (Art. 8). It laid down fundamental principles governing 'the rights and duties of religious associations, education, including higher education and scientific literature; conditions of service of officials of all public bodies; land laws and land settlements; and burial of the dead', (Art. 10). In concurrent legislative powers the States retained these powers so long as the Reich did not exercise them, but Art. 13 clearly stated that the law of the Reich would prevail over the law of a State, if the two conflicted with each other. In cases of doubt, the Supreme Court decided the matter.

As regards execution of laws, the Reich exercised control in those affairs in which it had exclusive legislative power; and in all other affairs laws of the Reich were carried into execution by the State authorities, unless these laws decreed otherwise, (Art. 14), though the Reich could issue general instructions.

Control of the Reich over the States. The Reich exercised general powers of supervision over the States which had been allowed the exercise of only those powers which had not been expressly assigned to the former. All cases of doubts or disputes between the Reich and the States were decided by the Supreme Court, and this was another improvement over the Imperial constitution, because at that time there was no such competent judicial organ to discharge this duty. At that time "the ordinary courts determined this *indirectly* as an incident of a challenge to the validity of a rule."[1] But now there was a direct challenge and a special court.

A Strong central government. The above description of the division of powers clearly shows that 'the hand of the Reich was everywhere, and this in the more fundamental of State activities. Economically, culturally, in her representative and administrative institutions, in the foundations of the educational system, in the matter of general civic rights, Germany was one, or far on the way to becoming one; and the battle provoked by the division of powers was in theory, between the conception of the Reich as a Federation and the Reich as a Unitary State with decentralization to Regions.'[2] The residual powers left to the States were so few, and the administrative and supervisory powers of the Reich were so large that fundamentally the system appeared to be unitary; although the historic federal stamp

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[1] *Theory and Practice of Modern Government*, vol. I. p. 364.

[2] *Ibid.* p. 368.

was far from having been completely erased.[1] Under the later regime of Hitler, the Reich had been converted into a unitary State, but how far the movement could bring about permanent changes could not then be foretold.

The Federal Legislature was bicameral consisting of an upper house *(Reichsrat)* and a lower house (Reichstag). *The Reichsrat* consisted of 68 members distributed thus: Prussia 27, Bavaria 11, Saxony, Wurtemberg 4 each, Baden 3, Thuringia, Hesse and Hamburg 2 each, and the other States 1 each.[2] The composition was based upon Art. 61 which stated: "In Reichsrat every state has at least one vote. The larger states have one vote for each 7,00,000 inhabitants. A surplus of at least 3,50,000 inhabitants is taken as equivalent to 7,00,000. No state may be represented by more than two-fifths of all the votes. The distribution of votes is regulated by the Reichsrat after every general census." Unlike the system in other federations, the strength of the German federal upper chamber varied with each census, though it still retained the federal principle to a certain extent; it did not recognise the equality of status of all the States (so far as their representation in the upper chamber was concerned); it translated the will of the States, as conceived by the governments or cabinets of the States.[3]

The Baden System of election. *The Reichstag*, or the lower house of the German legislature, was the principal holder of popular sovereignty in the Reich. It was elected, on a Sunday or on some public holiday, by universal adult suffrage, on the basis of proportional representation. The total strength was not fixed, but it varied with the number of votes cast at the election, there being assigned one representative to every 60,000 votes cast. The system adopted was based on Art. 24 in the constitution of Baden and was, therefore, called the *Baden System* which had been preferred to the Hondt System. The election on the Baden system was held thus: Germany was divided into thirty-five electoral districts. These districts were also formed into seventeen groups, each of the latter uniting two or more districts. Then over them all was the whole Reich including the entire territory of Germany. The political parties produced district lists of their respective candidates, each ticket of a party containing the names of

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[1] Ogg, *Governments of Europe*, p. 725.

[2] *Theory and Practice of Modern Government*, vol. I. p. 371.

[3] Rene Brunet, *The German Constitution*, p. 18.

its candidates for the districts. Then on the election day, each elector went to the polling booth and voted for the ticket of the party he favoured, that is, his preference was for the party and the programme and not for any individual candidate or candidates. Then the number of votes each party thus secured in the district was counted and for each 60,000 votes secured, it was given one representative from its list, beginning from the top. The fractions of 60,000 that remained unutilised for that party, were then transferred to its group ticket, and in each group the total votes unutilised in the districts of that group were again determined and for each 60,000 votes the party got one representative on the group ticket. Again, there might remain unutilised some votes, *i. e.*, fractions of 60,000, in the group; such votes were then transferred to the Reich ticket of the party; and all these votes for the seventeen groups were summed up and the party was assigned one member for each 60,000 votes, and one member for over 30,000 votes remaining as the final fraction. This method was advantageous in utilising the fractions of 60,000 votes, so that the principle 'that no votes be wasted or go unrepresented' was adhered to.

Advantages of the system. But no party could secure on its group and Reich tickets more members than it had directly secured on the district tickets. For example, if a particular small party had obtained 18 members in the count for the districts, then it could not get more than 18 members, for the unutilised votes of the districts, on its group and Reich tickets. This had been provided to discourage the springing up of small local parties which might not be sufficiently numerous in districts, but might try to secure members, by combining their unutilised votes, on the tickets for the groups or for the Reich.

All citizens, male as well as female, over twenty years of age were entitled to vote. The electoral districts either prepared an alphabetical list of their voters or only granted a voter an identification card or certificate, a duplicate of which was retained by the district authorities. The voter produced the certificate at the booth, to assure the authorities that he was entitled to vote. The political parties prepared the respective lists and provided each voter with a copy. The voter got a simple envelope from the district authorities, marked and put in it the list he wished to vote for, sealed the envelope and delivered it to the election authorities. So that Germany ignored the principle of maintaining permanent lists of voters and a citizen on reaching the prescribed minimum age limit secured an "electoral certificate at any time."

Bankrupts, paupers, those placed under guardianship, and those deprived of civil rights by a court decision, soldiers under colours, and those detained in mental asylums, or in prisons for criminal offences, were disqualified from voting. Political prisoners were, however, allowed to vote.

There was no provision for by-election. But at the time of the general election, the party lists were so drawn up as to provide for filling up possible vacancies whenever these happened. The chief features of the German system of election were the largeness of constituencies; long lists of candidates; the combination and reward of the surpluses; absence of by-elections; absence of small and insignificant parties; and equitable representation of all political parties.[1]

The Hitlerite system. The above method of election was in vogue till the later part of the year 1933, but towards the close of the year, Hitler appealed to the country and allowed only the Nazi party to contest elections, all other political parties having been either suppressed or not allowed to contest elections, so that in the election the voters went to the polls and only indicated their choice for or against the Nazi list. That is to say, during Hitler's regime the German system of proportional representation had disappeared. And as G. D. H. Cole and Margaret Cole rightly remarked, "The Weimar Republic is clearly doomed. For, although it is quite uncertain whether the Nazis intend to restore a monarchical form of government, they have shown that they have no use for the *bourgeois* Republic."[2]

Term and Powers of the Reichstag. The normal life of the Reichstag was 4 years, but it could be dissolved earlier to make an appeal to the country. The Reichstag exercised control over the cabinet which was responsible only to this popular branch of the legislature. The Reichstag might prosecute the National President and the cabinet before the National Judicial Court and demand that the people pronounce on the removal of the President (Art. 43). It might demand the presence of the Chancellor and the Ministers, whether in committee or in full session. Its members could address questions, in writing, to the cabinet, to which the latter might respond in writing. Such questions were taken up on a Tuesday or on a Friday. No discussions could, however, take place on the ministerial answers. Thirteen members might, in writing, interpellate the cabinet, but interpellations

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[1] *Theory and Practice of Modern Government*, vol. II. p. 917.

[2] *The Intelligent Man's Review of Europe Today*, p. 648.

were not followed by a vote as in France. The Reichstag exercised further control over the cabinet by means of a *Parliamentary investigation committee,* a novelty in German public law; this committee was appointed when one-fifth of its members demanded it. In addition, the Reichstag appointed two *permanent committees*; one dealt with Foreign Affairs, and the other controlled the activity of the cabinet of the Reich when the Reichstag was not in session, to safeguard the right of popular representation.

The federal executive. As the system of government instituted by the Weimar constitution was parliamentary, there had been provided a President to act as the head of the government, 'a new type of chief of state.' He was not merely a titular head but a powerful chief of state—a great necessity in Germany. He was more powerful than the French President but less powerful than the American President.

The German President was elected by 'the whole German People', the details being regulated by law. Every German citizen above 35 years of age was eligible for the office. He was elected for a term of seven years and was eligible for re-election.

A candidate for Presidentship had to obtain an absolute majority of the votes cast for being elected. If, however, no candidate got this much majority, a second election took place. In this second election any number of candidates might be presented, even those who did not contest the first election, and the one getting the largest number of votes declared elected, that is, there was no absolute majority requirement in the second election. But in 1934, Hitler alone stood for the election; no other candidate was allowed. On assuming his office the President took the oath of office which ran thus:

> I swear to devote all my energy to the welfare of the German people, to increase their prosperity, to protect them from injury, to preserve the Constitution and the laws of the Commonwealth, to perform my duties conscientiously, and to deal justly with all.

He could be removed from his office by an absolute majority of the electors to whom the question was referred on the demand of a two-thirds majority vote of the Reichstag. During the interval between this vote of the Reichstag and the referendum, the President remained suspended from office. But if, as a result of the popular vote, the President was retained in his office, he was considered to have been re-

elected for seven years, and the Reichstag dissolved. He could not be prosecuted for a criminal offence without the consent of the Reichstag.

Before the rise of Hitler in 1933, the President promulgated all laws passed by the legislature. He exercised the power of veto only in case of disagreement between the Reichsrat and the Reichstag, and the failure of the latter to rule out the objections of the former by a two-thirds vote, in which case the President could refer the question to popular vote or declare the measure as dropped.

As the head of the State he represented the Commonwealth in matters of international law. He concluded in the name of the Commonwealth, alliances and other treaties with foreign powers. He accredited and received ambassadors, (Art. 45). For the declaration of war and concluding of peace, a national law was formerly required. The President had supreme command over all the armed forces of the State. He appointed and dismissed all civil and military officers, 'if not otherwise provided by law.' If any State inside the Commonwealth failed to perform any of the duties imposed upon it by the constitution, the President took steps to force it to perform those duties, even by force of arms. In case there was danger to safety and public order in the federation, he took all steps to restore safety, even by using armed forces and by suspending, "in whole or in part, the fundamental rights established in Articles 114, 115, 117, 118, 120, 124 and 153."

Before 1934, he appointed the Chancellor, and, upon the latter's recommendation, the Ministers of the Commonwealth. In selecting the Chancellor, the President exercised his fullest discretion, but he usually appointed that leader who was likely to form a stable ministry. He could also dismiss the Chancellor, and this power President Hindenburg actually exercised by dismissing Chancellor Bruning in June 1932, and setting up a non-party government under the leadership of Von Papen, when this Chancellor, too, was similarly dismissed, much against the President's own wish, in December 1932.

Next to the President, another important Federal Officer in the National Executive, was the Chancellor, in one sense a Proto-type of the British Premier. The Chancellor formed the cabinet, the ministers of which he proposed for appointment by the President. The Chancellor was free to select as many ministers as he liked to keep in his cabinet, and the constitution did not fix any number. The Chancellor as also each minister, was responsible to the Reichstag, and had to resign when the National Assembly withdrew its confi-

dence. Unlike the British Prime Minister, the German Chancellor guided the general policy of his cabinet, which the ministers had to abide by, though the latter were free to fill in the details of their respective departments. The Chancellor had to be continuously informed of all measures which were important for the determination of the main lines of policy and the conduct of the business of government. But each minister was held "individually responsible to the National Assembly" for the detailed working of the department under him; the Chancellor being held responsible only for the general policy. The Chancellor presided over the meetings of his cabinet. Decisions in these meetings were arrived at by a majority vote, and the Chancellor (or in his absence the presiding officer) had a casting vote in case of a tie. If the Reichstag did not approve of the general policy of the Chancellor, the whole cabinet including him, resigned. So that the Chancellor governed and his ministers only administered, and in this sense he was more powerful than the British Premier who cannot make any general policy of his own binding upon the cabinet which works as a whole.

The existence of multi-party system in Germany till 1933 did not allow any Chancellor to retain the confidence of the Reichstag for a considerable time, because no party commanded an absolute majority. Between February 1919 and June 1928 there were as many as fifteen cabinets, giving an average life of 7½ months to each. The pressure of foreign relationships, too, was another important reason which accounted for these short-lived cabinets. "Every time a crisis has occurred in German relationships the balance of political strength and loyalty has been rudely disturbed, since passions have been so roused that often one could best govern by resignation from the Government".[1] As many as four cabinets fell on account of differences over the foreign policy of the Reich.

Before the rise of the Nazis to power, the executive in Germany followed the parliamentary practice of all other countries, the only special feature in the former being that on account of the existence of half a dozen strong political parties, there was always a difficulty in forming a stable government, and recourse was always had to form a cabinet after reaching agreement between two or more influential parties. But after the assumption of power by Hitler in 1933, the other political parties were suppressed and even the Nationalists, the suppor-

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[1] *Theory and Practice of Modern Government*, vol. II. p. 1106.

ters of President Hindenburg, entirely fused with the Nazis. Thereafter Chancellor Hitler had assumed dictatorial powers, putting an end, at any rate for some time to come, to the parliamentary executive which was provided in the constitution of Weimar.

The German Judiciary

Contrast with the American system. There has been a very important difference between the German judicial system and the American system. Even the Weimar constitution left this difference almost untouched. This difference lies in the fact that "whereas in the American judicial system the national authority is evidently conceived to be above that of the states, its Courts intervening to secure federal judgment in federal matters, in the German system the states were left with considerable freedom."[1] The Imperial Bundesrat decided conflicts between states, unlike the system in America where the Supreme Court is the authority to decide such matters. So that even in the Republican constitution (1919) of Germany, the distribution of judicial powers, as provided in section VII (Articles 102 to 108), made "little advance upon the old." This was a peculiarly German feature.

Judges: how appointed. Before Hitler, in Germany, judges were appointed for life, and were independent, subject only to the law. They could, however, be transferred from one office to another. They held office till they reached the prescribed age limit. Military courts could not be instituted except in times of war or on board war-vessels.

Administrative Courts in States. Before 1935, all states had established administrative courts provided in Art. 107. The states themselves appointed the judges of these courts. The main purpose of the administrative courts was "to give judgment on the legality of administrative actions, and disciplinary aspects of official activity." The citizen had a right to invoke the power of the courts against any act of an administrative authority. The courts were concerned with cases respecting the competence of municipal authorities and the various institutions and officers thereof or cases between individuals and the authorities regarding claims and obligations arising out of public law; the conflicts over powers between the higher local authorities, rates, orders under the police power, subjects which in English law are dealt with either by the Departments of State or ordinary

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[1] *Theory and Practice of Modern Government*, Vol. I. p. 313.

Courts of Law.[1]

Besides these Administrative Courts there were ordinary courts in all states, dealing with ordinary cases, criminal and civil, as in other countries of the world. The courts were of varying gradations with varying degrees of jurisdiction.

Administrative Courts in the Reich. In the Commonwealth (Reich) too, there were Administrative Courts on the lines of those in the states. There was also the Supreme Court or 'A Court of State' established by the federal government, as provided in Article 108 of the Constitution. This Court sat at Leipzig, and had 96 judges. It exercised appellate jurisdiction over all inferior courts and also original jurisdiction in certain cases. It was divided into four criminal and nine civil senates, each consisting of five judges.[2] It acted as a tribunal for trying "constitutional issues of the first rank."

Amendment of the Constitution: Direct Democracy

The amending process of the Weimar constitution of Germany reflected the sovereignty of the people of the Reich, unlike the method prevailing in the Imperial Germany which recognised the union as between Princes and not between peoples. The following methods could be adopted for amending the constitution:

(1) The two houses of the legislature, *viz.*, the Reichsrat and the Reichstag, might effect an amendment by a two-thirds majority, in each House, provided that two-thirds of the total members were present.

(2) If the Reichstag passed an amendment by a two-thirds majority of the total members of the House, and the other house persisted in objecting to that amendment, the President might refer the measure to the people, if asked to do so by the the Reichsrat within two weeks, or he might promulgate it. It was provided that in the referendum at least half of the electors must take part, and out of them a majority should vote in favour of the amendment. There was thus a conditional referendum.

(3) An amendment could be initiated by one-tenth of the voters and then if the Reichstag rejected it, it was referred to the people and if an *absolute majority* of the voters voted for it, it became valid.

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1 *Theory and Practice of Modern Government*, Vol. II. p. 1489.

2 *Statesman's Year Book*, 1932, p. 933.

To effect a constitutional amendment by means of a referendum a simple majority was sufficient if the Reichstag had voted for such an amendment; but if the Reichstag's approval was to be nullified in such a case a specified majority was required.[1]

The Weimar Constitution, in recognising the sovereignty of the people, had introduced an element of direct democracy, a provision which marked the most important improvement upon the Imperial Constitution. As described before, people elected, by a direct vote, their National President and could, in one sense, recall him or reassert their confidence in him, whenever there was a serious conflict between him and the Reichstag, and the latter demanded his removal from office. They could initiate laws by submitting a draft signed by one-tenth of the voters and could also demand that a law passed by the legislature be referred to their vote. This last demand could be made by one twentieth of the qualified voters. Their consent (only of those who were directly affected) was also necessary in making territorial reorganisations (Article 18). And lastly, they could propose and pass constitutional amendments, as described above. All these various methods by which people exercised direct and effective voice in the governance of the country were just in conformity with the spirit of the constitution which stated that all state authority emanated from the people. There were a few occasions when referendum was resorted to and people given a chance to determine the questions at issue.

Economic Life of The People

To rehabilitate the economic condition of a defeated people, to counteract the invasions into Germany of the Bolshevik movement from the east, and lastly, to satisfy the growing socialistic needs of the post-war period the constitution of Weimar recognised the importance of the welfare of the working classes and of the economic life of the German people in the fifteen articles (151-165) of Section V. This was tried to be achieved in the following two ways:

Workers' Councils. Firstly, the workers and salaried employees were organised together. Each factory consisting of fifty workers had a local workers' council, and similarly there were district workers' councils and then finally the National Workers' Council. Para 2 of Art. 165 said: "The wage-earners and salaried employees are entitled

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[1] Brunet, *The German Constitution*, p. 146.

to be represented in local workers' council, organised for each economic area, and in a National Workers' Council, for the purpose of looking after their social and economic interests."

Understanding between employers and workers. Secondly, effort was made to bring about a better understanding between the employers and the workers by instituting economic councils consisting of the representatives of both. "Wage earners and salaried employees are qualified to co-operate on equal terms with the employers in the regulation of wages and working conditions, as well as in the entire economic development of the productive forces. The organisation on both sides and the agreements between them will be recognised." In these words the constitution emphasised the need for co-operation between the employers and their workers. Thus had been instituted district economic councils, each covering an economic area, and the National Economic Council covering the whole territory of the Reich. The constitution fixed the composition of these councils thus: "The district workers' councils and the National Workers' Council meet together with the representatives of the employers and with other interested classes of people in district economic councils and in a National Economic Council for the purpose of performing joint economic tasks and co-operating in the execution of laws of socialisation. The district economic councils and the National Economic Council shall be so constituted that substantial vocational groups are represented therein according to their economic and social importance." The National Economic Council, often described as the Economic Parliament of Germany, consisted of 326 representatives of the various groups, distributed thus: agriculture and forestry 68; market industries and fisheries 6; general industry 68; commerce, bank and insurance 44; transport enterprises 34; small business and small industries 36; consumers 30; civil servants and the professions 16; other nominees of the government 24. Each group consisted of an equal representation of employers and workers.

An advisory body. The National Economic Council was mainly an advisory body. All laws relating to social and economic policy were, before being introduced into the National Assembly, referred to the National Economic Council for opinion. The National Economic Council itself had the right to propose such measures for enactment into law. If the National cabinet did not approve them, it could, nevertheless, introduce them into the National Assembly together with a statement of its own position. The National Economic Council

might have its bill presented by one of its own members before the National Assembly. Thus the National Economic Council had almost the same relation with the National Assembly (Reichstag) in all social and economic legislation as the Reichsrat had with the National Assembly in all other legislative measures.

The representatives in the National Economic Council had no fixed term, each group of employers or workers being free to recall any of their respective representatives at any time as well as fill up vacancies when they occurred. Being an advisory body, its decisions were not necessarily arrived at by majority rule; sometimes there was voting by groups and at other times by heads. The complete record of its proceedings on a particular measure was sent to the government which then formulated its own opinions. The Economic Council often worked through sub-committees, the original idea of treating it as a parliament of 326 representatives having been given up. The meetings of the Council and its committees were not open to public.

Political Parties

Revolution of 1918 increased party spirit. Even before the war of 1914-18 there were political parties in Germany; their importance was, however, not so great then as it became in the post-war period. The Revolution of November 1918 let loose the socialists, the state particularists, the democrats and all workers and soldiers to fight for acquiring influence in the making, and subsequently in the governing, of the state. The elections to the Constituent Assembly, on the basis of proportional representation, further resulted in sharpening the lines of division between the various political parties. Before 1919 Germany had representative government but without any responsible government. The political parties did not, therefore, exhibit the sense of responsibility which is a marked feature of parties in England and America. "An extraordinary premium was placed upon the creation of attractive programmes"[1] which had no chance, whatever, of being tested on the anvil of practical polities. The German politicians did not hesitate to make promises and set forth programmes that "were at once theoretically complete and inflated far beyond veracity." The Revolution of 1918-19, however, changed the whole face of German politics and the parties saw before them the possibility of being called

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[1] *Theory and Practice of Modern Government*, Vol. I. p. 446.

upon to assume the responsibility of forming government, and this had "an immediate and abnormally deflating effect" upon their programmes.

The Centre Party. The making of the Weimar constitution was a victory for the Social Democrats, and a defeat to the German Nationalists, the German People's Party and the Independents, all the three of which were anti-Democratic and desired to establish monarchic institutions in 1919. The Centre Party in Germany was mainly Catholic in its leaning. It was democratic and believed in the equality of men; it demanded revision of the Treaty of Versailles; creation of a functional representative body; promotion of reconciliation between classes and industries; connection between industry and politics, including co-operation of the workers in industrial management.

The National Socialist German Workers' Party. The National Socialist German Workers' Party began with a comparatively insignificant following of 32 in the May elections of 1924, and in the December elections its strength went down to fourteen in the Reichstag. In 1928 it further declined to 12, but in 1930 elections it again shot up to capturing 107 seats out of a total of 576, thus occupying a very important position second only to the Social Democrats who gained 143 seats. This success of the National Socialist Workers was due to the party's intensive and ceaseless efforts to appeal to the youth of the country against the parliamentary regime which had till then propped up on the vast foreign debts which the successive governments between 1924 and 1928 had incurred to keep Germany outwardly prosperous. The party had recourse to extreme measures. "A militant, violent, incessant propaganda was practised; men and women who stood in the way were murdered, a military organisation was created to give satisfaction to the longing of the young and the unemployed and oppressed, for freedom, and organised gymnastic community. Large numbers of the youth of the universities were attracted. A process of infiltration was attempted in the Army."[1] The party was essentially raceproud; it preached, firstly, Racial Nationalism including the exclusion of all non-Germans by blood from participation in German citizenship and its consequent dislike of the Jews, and, secondly, Social Economic Collectivism.

The Social Democratic Party. The German Social Democratic Party was started with its support to Marxian doctrines. Its cry for

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[1] *Theory and Practice of Modern Government*, Vol. I. pp. 576—77.

universal and equal suffrage won it great favour, and in 1914 it had 88 daily newspapers with a sale of nearly a million and a half. During the war there was a split in the party; the secessionists included Independent Socialists and Majority Socialists; and both of the groups were, later on, assimilated in other parties. The Social Democrats, as already said, were the most numerous party in the National Convention which produced the Weimar constitution, and they had, therefore, to conduct the government after August 1919. The party continued to occupy a very influential position, allying with some party or the other to form coalitions, till the rise of the Nazis to power.

Its aims. It believed in Socialism as the cure for the evil of modern industrial age, and sought to achieve its end through a parliamentary system. 'It stressed the good of the community over that of the individual, and pursued a policy of cultural as well as social improvement through the State until such time as it gathered a majority of voters. It supported a centralised Reich with local self-government, the abolition of privileges of birth, sex, religion and property. Administration was to be democratized; remedies against illegality of administrative action established; municipalisation of business enterprise extended. It had many immediate demands; like that of marriage, divorce, and the treatment of illegitimate children. Its educational policy induced full and free opportunities for all, and *secular* instruction only, and was strongly opposed to any publicly admitted right of the churches to influence the schools. Its financial policy was based on direct taxes. The party supported economic and factory councils in which the workers might acquire a say in the direction of industry. It was a party of international affiliations, and supported national minorities, international disarmament, the League of Nations, and the backward peoples against exploitation."[1] In short, this policy resembled that of the British Labour Party, with the only difference that the German Socialists were wedded to Marxian doctrine in general. This doctrine, however, could not make much headway.

The Nazi Party. The most influential party in post-war Republican Germany was the German edition of the Italian Fascists, called the Nazis who after 1933 were the only political party in Germany. Nazism had much in common with Fascism, particularly its fight against parliamentary form of government. It was the product of the

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[1] *Ibid.* p. 592.

general wave of intense nationalism that had been sweeping over Europe since the beginning of 1919, notwithstanding the talk of internationalism and the professed abhorrence for war.

Hitler as its founder. Hitler was the father of the Nazi movement. He was an Austrian by birth, having been born in Bavaria where he started his political career as a Socialist. He took prominent part in the Socialist movement of 1918-19. Socialism was rigorously suppressed in Bavaria in 1920; and the anti-Socialists swept the polls at the following elections and succeeded in putting down the Communist movement. "It was in this atmosphere of revolution and counter revolution that Hitler created his Nazi organisation, hovering at first between the demand for Bavarian separatism and the creation of a powerful pan-German State."[1] It soon gained considerable support, particularly in 1923, when Lundendorff joined its ranks.

Its varying fortunes. It became extremely militant in attitude and tried to overthrow the Republican constitution. The Bavarian Government repressed it, for the time being, and in April 1924 sentenced Hitler to five years' imprisonment. He was, however, released within a few months, contested the elections of 1924 and gained 32 seats. But the Nazis again lost ground in the elections of 1928; they could capture only 12 seats. However, the world slump after 1928 gave Hitler his chance in Germany which was then facing gigantic economic crisis. The Nazis began to acquire considerable popular support. In the elections of July, 1932, they polled $13\frac{3}{5}$ million votes and captured 230 seats in the Reichstag. Hitler refused to agree to the formation of a coalition government and the Nationalists were allowed to form government with von Papen as Chancellor. By this time the centre of gravity had shifted from the south to the north, and the Nazis became the strongest party in Prussia. Four months later, they again suffered a setback and in the elections of November, 1932, they got only 106 seats and $11\frac{3}{4}$ million votes to their credit, and it was expected, in certain quarters, that Nazism had started on its downward march.

Power comes to Nazis. At that time the Chancellor was von Schleicher who tried to appease the general discontent in the country by following a more moderate policy. He could not, however, continue in power for long. President Hindenburg was then compelled by the force of circumstances to offer Chancellorship to Hitler who formed

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[1] Cole, *The Intelligent Man's Review of Europe To-day*, p. 643.

his first Nazi Government on January 30, 1933, including therein Papen and the Nationalists who were friends of the President. Though Papen was made Vice-Chancellor, the real power passed into Nazi hands.

Failure of German Parliamentarianism

What the Weimar Constitution had done. The Weimar constitution had established a federal, republican, parliamentary government in Germany. The German constitutionalists had hailed the introduction of parliamentarianism, hoping that the system would stabilise democracy and lead to the happiness and prosperity of the nation. But within a decade of its working the system showed signs of complete failure, and in 1933 it yielded place to Fascist dictatorship under Adolph Hitler.

Various views regarding failure of the Weimar Republic. The failure of the Weimar parliamentary, republican, federal system has been attributed to different reasons, on account of the many viewpoints from which people have looked at the subject. Some hold that the weakness of German politicians and parliamentarians led to the failure of the Weimar Republic; others assert that the Treaty of Versailles was responsible for the failure of the German parliamentary system. Neither view is entirely correct; the truth lies somewhere between the two.

Conditions necessary for the success of parliamentarianism. That the establishment of the Republic was enthusiastically received by the German people, on the whole, cannot be questioned. But mere popular enthusiasm was not enough to make this important constitutional experiment a success. Certain conditions are necessary to make parliamentarianism a success. Firstly, as the system involves the formation of political parties, two and only two political parties are necessary for the successful working of parliamentary government. This has been demonstrably established by the working of the English and French systems. In the former country, parliamentarianism was a great success till the rise of the third party (the Labour Party), and in the latter the existence of the multi-party system—to be more accurate, the existence of the many political "groups"—has led to the extreme instability of character of the French cabinets, forcing them to perform political experiments of a kaleidoscopic nature.

Absence of these conditions in Germany: multi-party system. In Germany the Weimar constitution introduced the Baden system of proportional representation which, while it satisfied the claims and demands of the many political parties to obtain seats in proportion to the support they obtained at the polls, directly encouraged the continuance of the multi-party system. None of the parties commanded the support of the majority in the Reichstag, and hence from its very outset the parliamentary system suffered the inherent weakness of coalition, and unstable cabinets. That the first eleven cabinets had an average life of 7½ months each clearly proves how the German cabinet system was inclining towards the French system.

Financial instability in Germany. Secondly, the new German parliamentarianism needed financial stability for its success. But the treaty of Versailles had imposed on her extremely heavy financial obligations, the war reparations. Even when the reparation question was being discussed in 1918-19, far-sighted thinkers had protested against the inadvisability of loading Germany with excessive indemnities. But their protests did not appeal to the Allied Powers who seemed to be bent upon exacting the heaviest penalties from Germany, expecting that payments would be made by the latter sufficient in amount to cover their own expenditures on reconstruction of devastated areas and rehabilitation of soldiers. On the other side, the German people felt that the promise to pay was extorted from them under duress, and they and their governments would pay only when they were compelled to pay. Anxious to pay the Allies, the Germans developed their industries with the greatest speed and consequently cheap German goods flooded every nook and corner of most countries. Other countries then raised high tariff walls against German imports, to protect their own manufactures. This accentuated the financial difficulties of the German government. The Weimar constitution received too great a blow within the first few years of its working. The successive coalition cabinets proved unfit, rather powerless, to cope with the financial crisis created by the reparation problem.

Thirdly, the humiliation inflicted on the German nation by the severe terms of the treaty had created a new psychology of the defeated nation. Germany's military strength was crushed, but not her military spirit and patriotism. Germany needed a system that could concentrate all power in one place and in a few hands, without any chance of a change in policy. The young German mind was

ready to welcome the party that made promises of an early retribution.

Traditional German militarism. Fourthly, experience has shown that certain traditions are necessary to train a nation to work parliamentary institutions. The pre-war German Empire had developed extreme form of aggressive militarism under Prussian control. The parliament was there, but the Bundesrath—in fact, the Imperial Chancellor—exercised all control, and the Reichstag was a virtual nullity. The abnormal circumstances created in Germany by the defeat in the war needed a strong administration. For these several reasons the experiment in parliamentary institutions failed to solve the fundamental problems facing the defeated Germany.

The Third Reich

Hitler in power. With the assumption of power by the Nazis under Hitler on January 30, 1933, Germany actually entered the Third Reich, despite the formation of a seemingly "coalition" cabinet with Hitler as Chancellor. Germany waited with bated breath to see what Hitler would do to implement the promises the National Socialists (the Nazis) had made. January 30 was celebrated as the dawn of a new era. Evidently, Hitler was more in office than in power. His party, the National Socialists, were still not in majority in the Reichstag. He had to depend upon the support of other parties.

The Reichstag fire incident determined his mind. General election was ordered for March 5. It resulted in triumph for Hitler. The National Socialists obtained 44% of the votes and thus captured 288 seats out a total of 647, and with the tacit help of their supporters, the German National People's Party, they commanded 340 seats for fifty-two per cent. of the votes.

The success of the National Revolution was now assured. It is true to say that no similar revolution had been effected in post-war Europe with less bloodshed. The Nazis *came into power* by constitutional means. That they were determined to continue in power *under cover of constitutionalism*, too, cannot be doubted.

Aims of Hitler. The aims of Hitler were but the essence of National Socialism, which the original theorist Feder, had thus set out in an official commentary: "All people of German blood, whether they live under Danish, Polish, Czech, Italian or French rule, must

be united in the German Reich.....We will not renounce a single German in Sudeten, in Alsace-Lorraine, in Poland, in the League of Nations colony Austria, or in the succession states of old Austria." The Nazi *political* A. B. C. also declared: "The Third Empire is to be a future Christian—German Empire of the Middle Ages and of the Imperial Empire of Bismarck, and which is to bring about the unification of all Germans living in Central Empire." Alfred Rosenberg, Director of the Foreign Affairs Bureau of the Nazi Party, clearly enunciated the aims of the Nazis in these words: "Racial honour demands territory and enough of it....In such a struggle there can be no consideration for worthless Poles, Czechs, etc. Ground must be cleared for German peasants." And he further said, "A Nordic Europe is the solution of the future, together with the German *Mitteleuopa*. Germany as a racial and national State from Strassburg to Memel, from Eupen to Prague and Lalbach as the central Power of the Continent, as a guarantee for the south and south-east. The Scandinavian States and Finland as a second alliance to guarantee the north-east and Great Britain as a guarantee in the west and overseas necessary in the interest of the Nordic race."

One man rule needed. With a view to achieving these high aims, it was necessary to suppress all opposition to National Socialism in the Reich, to concentrate all authority in a few hands—may in one hand—to introduce a system of internal administration suited to the needs of aggressive militarism, and finally to control all the activities of the individual so as to make him completely subservient to the will of the State.

The new Reichstag held its first solemn session at the Garrison Church in Potsdam, which included a ceremony at the tomb of Frederick the Great. The same afternoon the Reichstag met at Berlin and re-elected Goering as its president. On March 23, Herr Hilter outlined his policy in a speech, while introducing an important legislative measure which, when passed by the two Houses the same day, became "Law to Combat the Misery of People and Reich." It was popularly known as the *Enabling Act*; it came into force on March 24, 1933. This law laid down:

> National laws can be enacted by the Reich cabinet as well as in accordance with the procedure established in the constitution. This applies also to the laws referred to in

article 85, paragraph 2,[1] and in article 87[2] of the constitution. (Art. 1).

The Reich laws enacted by the Reich cabinet may deviate from the constitution in so far as they do not affect the position of the Reichstag and the Reichsrat. The powers of the President remain undisturbed. (Art. 2).

The Reich laws enacted by the Reich cabinet are prepared by the Chancellor and published in the *Reichsgesetzblatt*. They come into effect, unless otherwise specified, upon the day following their publication. Articles 68 to 77[3] of the constitution do not apply to laws promulgated by the Reich Government. (Art. 3).

Treaties of the Reich with foreign states which concern matters of national legislation do not require the consent of the bodies participating in legislation. The Reich cabinet is empowered to issue the necessary provisions of these treaties. (Art. 4).

This law becomes effective on the day of its publication. It becomes invalid on April 1, 1937: it further becomes invalid when the present Reich cabinet is replaced by another. (Art. 5).

This Act did not formally abrogate the Weimar Constitution which still continued to be, in theory only the constitution of the Third Reich. But in effect, it transferred all legislative power from the Reichstag and Reichsrat (without, however, abolishing these bodies) to the Reich cabinet. The laws promulgated under Article 1 of the Act could deal with all matters not excluding the budget, and they were not to be subject to the process of legislation provided in the Weimar Constitution. They could even deviate from the Constitution. Moreover, as the Chancellor prepared the laws on behalf of the Reich cabinet the Enabling Act practically gave all legislative power in the Reich, including the making of treaties with foreign states, to one single individual, *viz.*, the Chancellor. The only limit imposed was that the Enabling Act had force for 4 years, *i. e.*, till 31st March, 1937.

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[1] The paragraph reads: "The Budget must be passed into law before the opening of the financial year."

[2] The article reads: "Funds may be obtained by way of loan in case of special necessity, and, as a rule, only for expenditure on productive undertakings. Such a proceeding, as well as the giving of a security on behalf of the Reich, may be effected only upon the authority of a law of the Reich."

[3] These articles related to the procedure of legislation in the Reich, the moving and passing of measures in and by the two chambers, etc.

Before the four years expired, the Reichstag decided on January 31, 1937, to continue the Enabling Act for a further period of four years. In this way personal dictatorship of Adolph Hitler was established in the Reich, without, however, admitting the cancellation of the Weimar Constitution.

The Enabling Act brought to an end "negative parliamentarianism." Anonymous responsibility was replaced by "consciousness and joy of the responsibility of leaders." It signified the manifestation of the special confidence of an overwhelming majority of the Reichstag in the government of national concentration, and concentrated all legislative and financial powers in the hands of Adolph Hitler who could act with quickness and effectiveness without having to await the consent of any deliberative body. No doubt the Act continued the Reichstag and Reichsrat for the time being (though without any legislative powers); on February 14, 1934, the government issued a decree abolishing the Reichsrat, thus depriving the states of direct representation in the national parliament.

A week later, *i. e.*, on March 31, 1933, the Reich cabinet promulgated the *Provisional Law for Co-ordinating of the States with the Reich* which came into force on April 3, 1933. If the Enabling Act put an end to parliamentarianism in the central government of the Reich, this second law put an end to parliamentarianism in the states for it gave the same legislative powers to state cabinets as the Enabling Act had given to the Reich cabinet. The state cabinets were forbidden from promulgating any law making departure from the Reich constitution. But they could promulgate laws deviating from the state constitutions. All the state diets, except the Prussian diet, were dissolved and fresh elections ordered. The communist party was deprived of the right of representation, and all other parties were apportioned seats in the diets in proportion to their support in the Reichstag elections of March 5, 1933.

On April 7, 1933, the Reich cabinet promulgated another law for co-ordinating of the states with the Reich. It was popularly known as the Reich Regents Law. By this law Hitler concentrated in his own hands the complete administration of the states, which were to be administered through the Reich Regents appointed by the President and responsible to the Chancellor. It was the duty of the Reich Regent to see that the general policy laid down by the Chancellor was observed in the state for which he (the Regent) was appointed. This law gave the Reich Regent in a state the following powers:

(1) Appointment and removal of the head of the state cabinet, and upon his proposal, the other members of the state cabinet;

(2) Dissolution of the legislature and designation of new elections;

(3) Preparation and Publication of state laws, including the laws which are determined upon by the state cabinet according to.....the temporary law of March 31, 1933..... Article 70 of the Reich constitution of August 11, 1919, applies accordingly.

(4) Upon the proposal of the state cabinet appointment and dismissal of higher state officials and judges, so far as this formerly was accomplished by the highest state officials;

(5) The power of pardon.

A Reich Regent could not, at the same time, be a member of a state cabinet (Art. 2). The Reich Regent was appointed for the duration of a state legislative period. He could be recalled at any time by the Reich President on the proposal of the Chancellor (Art. 3). Votes of no confidence of the state legislature against the head and the members of the state cabinet were not permitted, (Art. 4). In Prussia, the Reich Chancellor himself exercised the powers of Reich Regent. Members of the Reich cabinet might at the same time, be members of the Prussian state cabinet.

The passing of the Reich Regents Law effected constitutional changes of a far-reaching character. It ended the sovereignty of the states which continued to exist only as administrative units in a unified Reich. German federalism came to an end. Administration of every state passed into the hands of the Reich Regent, a political appointee of the Reich. The Regent represented the Reich authority in the state; he exercised authority over the state Government through the power of dismissing and appointing the president and the members of the cabinet of the states; he prepared and promulgated the state laws. The *Reichswehr* law of July 20, 1933, further gave him the following power: "In case of public emergency or of a threat to public order the military forces must render assistance at the request of the Reich Regent, or, in the case of Prussia of the Reich Chancellor or officials designated by him."

On October 14, 1933, the Reichstag was dissolved, and a new one elected on November 12, when only the Nazi party was allowed to contest the elections. On January 30th, 1934, just a year after Hitler's

accession to power, a bill was moved in the Reichstag, passed the same day by both the Chambers, and enacted as *Law Concerning the New Structure of the Reich*. According to this law, the popular representation of the states was abolished. The sovereign rights of the states were transferred to the Reich, and the state Governments were declared subordinate to the Reich Government. The Reich Regents were made subordinate to the Reich Minister of the Interior. The Reich Government was empowered to make new constitutional law.

According to this single, simple law proclaimed on January 30, 1934, the states ceased to be political units, and remained only as territorial units for administrative convenience, completely subordinate to the Reich. The purpose of the law was explained by Dr. Frick, in a radio broadcast, thus: "The historical task of our times is the creation of a strong national unitary state to replace the former federal state. There is no longer room in the new Germany for State (*Lander*) in the former sense or for State frontiers. . . . The State Governments from today on are merely administrative bodies of the Reich. . . The laws concerning the new structure of the Reich. . give the Reich Government complete power to undertake the constitutional reconstruction of the Reich." The laws removed even the few restrictions contained in the *Enabling Act*, regarding the authority of the Reich cabinet to promulgate Reich laws.

On February 14, 1934, the Reich Government issued a decree by which the Reichsrat, the only remnant of states' individuality, was abolished.

Abolition of parties. Hitler's Government had already removed the weakness of government inherent in the multi-party system by abolishing all the political parties other than the Nazis (National Socialist). The Communist Party was banned. The Socialists also ceased to function as a separate party; 94 out of 120 of the Socialist deputies had voted for the Enabling Act; the Nazis had seized all control over the socialistic organisations like trade unions, and arrested principal socialist leaders; a decree of July 7, 1933, had abolished the socialist representation in the Reichstag and the Prussian Diet. The Democratic Party had been banned on June 22, under an order of the Reich Minister for the Interior. The other smaller parties also disappeared, some of them merged themselves in the Nazis and others voluntarily dissolved themselves. Finally, on July 14, 1933, *Law Prohibiting the Formation of New Political Parties* was promulgated by the

government, which recognised the National Socialist German Party as the only political party in Germany. Article 2 of this law penalised the formation of new political parties by providing that whosoever made such an attempt to form a new political party would be "punished with imprisonment in a penitentiary up to three years or with confinement in a jail from six months to three years unless the act is punishable by a higher penalty under other provisions."

One party government established. By these steps all power in the Reich was placed in the hands of the Nazi party; this position was legalised by a law made on December 1, 1933, and put into force the following day. It was called *Law for safeguarding the Unity of Party and State.* It declared that "After the victory of the National Socialist Revolution the National Socialist German Workers' party has become the carrier *(Tragerin)* of the government and is inseparably connected with the state. It is a corporation of public law. Its constitution is determined by the leader (Fuehrer)." Further articles of the law gave full powers to the leader to maintain discipline in the party and to punish any violations. Thereafter the dictatorship of the Nazi party virtually became the personal dictatorship of Hitler. President Hindenburg (elected April 26, 1925, and re-elected April 10, 1932) died on August 2, 1934. That very day Hitler published a law combining in his person the two offices of President and Chancellor off, and adopted the designation of "Fuehrer and Chancellor."

On January 29, 1935, the government published another law called the *Satthalter Law* by which each Reich Regent became head of the government of his territorial division, but completely subordinate to the Fuehrer and Chancellor. This gave Hitler fullest control and power over the Reich.

Government of the Third Reich

We may now briefly state the form of the government that existed in the Nazi Reich. All authority of government had been handed over, constitutionally, to the Nazi party. So that according to Hitler it was not the state that controlled the party, but the party that controlled the state. The constitution of the party was prepared, amended or interpreted by the *leader*, *i. e.*, Hitler. All members owed unquestioned obedience to him and were liable to such punishment for violation of discipline as the leader might consider proper.

The leader (*Fuehrer*) formed the cabinet according to his own choice.

Besides the *Fuehrer and Chancellor*, there were the ministers of Interior, Foreign Affairs, Defence, Finance, Food and Agriculture, Economic Affairs, Post, Transport, Aviation, Justice, Learning and Education, Church Affairs, National Enlightenment and Propaganda, and two ministers without portfolio. Of these last Rudolf Hess was till his internment in England the personal deputy to the Fuehrer.

In addition to the above cabinet, Hitler created on February 4, 1938, a new secret cabinet smaller in size and entrusted with the task of advising him on all foreign and political questions. It consisted of Herr Hitler, General Goering, Herr von Ribbentrop, General Keith (chief of the Supreme Command), Herr Rudolf Hess, Dr. Goebbels and Admiral Raeder. This decree had given Hitler untrammelled control over the armed forces. It had resulted in the closer merging of the state and the Nazi party. The new secret Cabinet could well be compared to the committee of the Imperial Defence in Great Britain as its constitution was similar and purpose apparently the same. Three new functions of Chief of the Air Force, Inspector General and Chief of the Ministers' Personal Staff had been created. All these changes were approved by the Reichstag which met on February 20, 1938.

The old legislature set up by the Weimar Constitution had practically disappeared. The Reichsrat was abolished on February 14, 1934. The Reichstag remained but in an altered form. The list of 400 members, all Nazis, that composed it was prepared by the Fuehrer. Voters were required to say 'yes' or 'no' to the list; no other party being in existence, there was no other list to vote upon. Thus the Baden system of proportional representation had disappeared. All legislative powers had been transferred by the Enabling Act of 1933 (renewed in January 1937) from the Reichstag to the Reich cabinet wherein the Fuehrer's will was final. The Reichstag was convened if and when the Fuehrer considered it necessary. It listened to the account of the government's achievement and, according to the party discipline, ratified the actions of the government. It was at the most only an advisory body.

The judicial system had been renovated. By the law of April 1, 1935, uniform law courts had been instituted throughout the Reich. They were vested with varying degrees of power, civil and criminal. There were instituted commercial chambers to try commercial cases. The highest court was the Supreme Court (*Reichsgeritcht*) consisting of 100 judges. It sat at Leipzig and exercised revisory jurisdiction over all inferior courts. A law promulgated on July 5, 1935, had introduced

a new principle of criminal law laying down that courts should punish offences not punishable under the Criminal Code if they were deserving of punishment "according to the underlying idea of a penal code or according to healthy public sentiment." This was in keeping with the general spirit of Nazi governmental system.

The one-party government firmly seated in power in the Third Reich had thus introduced great constitutional changes. The Nazi party in theory, and through it the Reich cabinet (completely under the Fuehrer and Chancellor's control) in practice, ruled the Reich. W. B. Munro has thus described that fate of the Weimar Constitution: "It has been virtually annulled by action of the Hitler government, especially by the governmental reorganization law of September, 1935. To-day there is no real distinction in Germany between constitution and laws, or between laws and decress. The distinction, if it exists at all, is purely technical. Yet the Weimar constitution has never been definitely abrogated as a whole, with another constitution issued in its place. Powers have merely been transferred to Reich ministry by laws having the effect of constitutional amendments and this transfer of power has become the basis for the issue of decrees having all the force of constitutional enactments." In fact the whole power over German law and German constitution had passed into the hands of Hitler himself.

After the fall of Germany and consequent disappearance of Hitler and his lieutenants from the scene of Germans politics, the principal Allied victors, *viz.*, Britain, France, the U. S. A. and the U. S. S. R. occupied the four zones into which Germany was divided. The Third Reich was dead. During the years of occupation, the four powers had not agreed on a final solution of the German problem. Soviet Russia has organised eastern Germany on the communistic basis. On the other hand, the other three powers have allowed Western Germany to adopt a new democratic constitution of a federal republican type.

Germany After World War II

The problem of European peace, and therefore of world peace, was to the Allied powers the problem of incapacitating Germany from raising her war potential and resetting up a military machine which could be a menace to Europe (particularly to France which had been Germany's enemy number 1) and ultimately a menace to world peace. Ever since the Franco-German war of 1870-71, German ambition

had been to dominate Europe. This ambition had been the result of the teachings of German philosophers who extolled the role of the state as the supreme institution over the individual, sang the praises of the high character and natural role, as leader of mankind, of the Nordic race and the self-appointed role of Prussian militarism as the unifier of all territories inhabitated by the Germans into one Reich.

To the Allied powers, therefore, the first task was to destroy the military potential of Germany; the second was to destroy the Prussian influence in German politics; the third was to democratize the political set up in Germany; and the last was to compel Germany to adopt an international outlook based on respect for international law and commitments by confining her activities within her own territory and to give up all dreams of European conquest and hegemony over Europe.

The Allied powers had agreed at the Moscow Conference on October 30, 1943, to punish the major war criminals and in order not to be outwitted in this effort as they had been after the Treaty of Versailles, they concluded the London Agreement of August 8, 1945, to set up an International Military Tribunal to try war crimes whose effects were not confined to any particular area. This subsequently led to the Nuremberg Trials of twenty-four prominent Nazi leaders who were considered responsible for the various war crimes. The Military Court held its sittings in the Palace of Justice at Nuremberg, which was really the town where the Nazi party rallies were held. The trial lasted from November 20, 1945, to August 31, 1946, and judgment was delivered on September 30, and October 1, 1946. One of the accused, Gustav Krupp von Bohlen und Halbach could not be tried on grounds of health; another, Lev, committed suicide during the trial; of the nine sentenced to death Goering took his life on the night of the execution and the remaining eight (generals Keitel and Jodl, Ribbentrop, Rosenberg, Frick, Frank, Kaltenbrunner, Streicher and Seys-Inquart were hanged on October 16, 1946; seven were imprisoned for life or terms ranging from ten to twenty years, while three (Schacht, von Papen, and Friesche) were acquitted. The legality of the Nuremberg trials has been questioned in several quarters on grounds which cannot be easily brushed aside. But the Allied powers succeeded for the time being in crushing Nazism and creating terror among potential warmongers.

Germany was divided into four zones, the three westerm ones under the United States, Britain and France, were later formed into West

German Federal Republic with a republican constitution, with the city of Bonn as the capital and Dr. Konrad Adenauer as Prime Minister. Eastern Germany under Russian control became a cummunist state, a settlement not recognised by the Western powers. The problem of German unification under a free democratic government still remains unsolved due to the conflicting attitudes and ideologies of the two power blocs.

The Government of Western Germany

West Germany now formed into the Federal German Republic is governed according to the constitution framed at Bonn and ratified on May 18-21, 1949, and comprises the territory formerly under the control of the three Western powers covering an area of 94,587 square miles and a population numbering 49,700,300 as of September 1950. These figures include Western Berlin also.

The Bonn Constitution. The Bonn Constitution of the Federal German Republic consists of 146 Articles comprised within eleven sections. The first section consists of nineteen Articles which lay down the Fundamental Rights of the People. The first Article lays stress on the inviolability of human dignity which it is the duty of the state to respect and protect. All fundamental rights are self-executing, that is, they are automatically binding on the three organs of government. And for all violations of the fundamental rights the individual can have recourse to judicial redress. This particular provision is looked upon by German lawyers as the Magna Carta of the German people. Other rights guaranteed include : equality before the law (Article 3), nondiscrimination for reasons of sex, race, language, ancestry, faith, religious and political opinions; inviolability of the person (Art. 2 para 2); abolition of capital punishment (Art. 102); freedom of religion and conscience (Art. 4), nobody to be forced to bear arms (a device to stop compulsory military training and crush militarism, the corner-stone of German policy); freedom of opinion (Art. 5); freedom of association (Art. 9); inviolability of dwelling (Art. 13). Private property, right of inheritance, and procedure of eminent domain, with due compensation are guaranteed, by Article 14. While parents are free to determine the religious education of their children, the entire education system remains under state supervision (Art. 7). Constitutional amendments require approval of the two-thirds of the members of both houses of the federal legislature. Article 6 renounces

nationalism and militarism, outlaws war or such actions as are likely to disturb peaceful relations among nations. The Republic is to restrict its sovereignty so as to respect the ideal of mutual collective security.

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BOOK SIX

SOME UNITARY GOVERNMENTS

Chapter 22. Government of France.
„ 23. Government of Italy.
„ 24. Government of Japan.
„ 25. Government of the People's Republic of China.

There be three sorts of government, monarchical, aristocratical, and democratical, and they are to fall three different ways into ruin: the first by tyranny; the second by ambition; the last, by tumults.—A commonwealth grounded on any of these is not of long continuance; but wisely mingled, each guards the other and makes government exact.

—QUARLES

* * *

Great revolutions are the work rather of principles than of bayonets, and are achieved first in the moral, and afterwards in material sphere.

—MAZZINI

* * *

Men are qualified for civil liberty in exact proportion to their disposition to put chains upon their own appetites; in proportion as their love of justice is above their rapacity; in proportion as their soundness and sobriety of understanding is above their vanity and presumption; in proportion as they are more disposed to listen to the counsels of the wise and good, in preference to the flattery of knaves.

—BURKE

* * *

Fear not the tyrants shall rule for ever,
Or the priests of the bloody faith;
They stand on the brink of that mighty river,
Whose waves they have tainted with death.

—SHELLEY

22

SOME UNITARY GOVERNMENTS

THE GOVERNMENT OF FRANCE

Give us a name to fill the mind
With shining thoughts that lead mankind,
The glory of learning, the joy of art,—
A name that tells of a splendid part
In the long, long toil and the strenuous fight
Of the human race to win its way
From the ancient darkness into the day
Of freedom, Brotherhood, Equal Rights,
A name like a star, a name of light,
I give you France.

—DR. VAN DYKE

OF ALL THE countries on Continental Europe, France was the first to adopt parliamentary system of government having directly borrowed it from England, her next-door neighbour. France also competed with Britain in the race for colonial expansion in the two worlds. We may thus conclude how France acquired such great importance in the international field.

France proper covers an area of 212,659 square miles on the Continent with a population (excluding military, air and naval forces, etc. (numbering 312,105 in 1946) numbering 42,784,445 in May 1954. Besides the territory on the mainland, France (though called the Union of France, *Union Francaise* in the constitution of 1946) has a large number of possessions overseas which together cover an area of 4,617,579 square miles and a population numbering nearly 70 millions.

Constitutional History. Unlike England, France has a constitutional history marked by revolutionary epochs in which complete departures in constitution making have been made. This is true not merely of the form and nature of government but also of the electoral system. For this reason France has been rightly called 'a laboratory for

political experiments.' During the course of eighty years, from 1791 to 1870, France adopted, one after another, eleven complete constitutions none of which lasted for any length of time. Prior to 1789 the year in which the French Revolution broke out on return of the French army from America where it had assisted the Americans to wrest their political freedom from the English rule, the King of France was himself the Constitution, as is clear from the remark 'I am the State' which is attributed to Louis XIV. The French Revolution was the anti-thesis of the autocratic monarchical rule in which there was no liberty of the individual, whether religious or secular. He had to adopt the religion of the State. The French revolutionaries constituted a National Assembly in 1789 and proclaimed in a solemn declaration that man has natural rights, sacred and inalienable. The Assembly issued the famous Declaration of Rights which secured to the individual liberty of work; liberty of conscience; liberty of speech and press; liberty of assembly and association; the rights of property; etc. These rights thus gave an entirely new conception of the State. The Church was separated from the State. Article 10 of the Declaration stated: "No one shall be prosecuted on account of his opinions, even religious opinions, provided their manifestation does not disturb the public order by law established." Similarly Article 17, relating to private property declared: "Property being a right inviolable and sacred, no one may be deprived thereof, except when the public necessity, legally constituted, plainly demands it, and on condition of a just and preliminary indemnity."

The Revolution of 1789 was followed by no less than eleven constitutions drawn up one after another, and differing in several respects, and varying from republican to monarchical. These were made in the following order :—

(1) The Constitution of September 3rd, 1791, which gave France a limited monarchy which proved short-lived.

(2) The Constitution of June 24th, 1793, established by the Jacobins with republican institutions.

(3) The Constitution of August 22nd, 1795, which vested all legislative power in a Council of Five Hundred and a Council of Ancients, and Executive power in a Directory of Five.

(4) The Constitution of December 13th, 1799. Under this constitution the Directory of Five assumed autocratic power; Napoleon ultimately acquired supreme power and in 1802, the office was conferred on him for life, with extended powers.

(5) The Constitution of May 18th, 1804. Under this Constitution the Consulate was replaced by the Empire, and Napoleon assumed the title of Emperor. The Constitution was revised by certain other Acts between the dates of 1804 and 1814.

(6) The Constitutional Bourbon Charter of June 4th, 1814, when the Bourbons were restored with Louis XVIII, as king. Under this Constitutional Charter a parliamentary system was established, with Ministerial responsibility to follow it, the legislature consisting of two houses, one nominative and the other elective on a very limited franchise. The Charter, however, maintained the principle of legitimacy, and this led to a revival of Imperialistic ideas, giving Napoleon the opportunity for the hundred days. During these Hundred Days Napoleon promulgated the *Acte Additional* in order to counter the Bourbon Charter.

(7) The Constitution of August 14th, 1830. The revolution of July was utilised by Thiers to put the House of Bourbon-Orleans in power. Louis Phillippe undertook to support the Charter of 1814, to recognise the supremacy of the people, to abolish hereditary peerage, to lower the property qualification for voters and for eligibility for election. Constitutional monarchy was thus replaced in France, and the Organic Laws of 1831 followed as a result.

(8) The Constitution of November 4th, 1848. Under this Constitution the Republic was restored. It conferred universal suffrage, created a single chamber Government, forced the separation of powers, and appointed a President elected by universal suffrage for periods of four years, each President being ineligible to succeed himself. Nevertheless, when Louis Napoleon was elected President on January 14th, 1852, his period of office was extended for 10 years.

(9) The Constitution of November 7th, 1852. Under this Constitution the Empire was re-established, and Louis Napoleon assumed the title of Emperor, this act being ratified by a plebiscite of the country held on November 21st and 22nd, 1852.

(10) The Constitution of May 1st, 1870. Certain constitutional changes had occurred since 1860, and these changes were now codified, forming what was actually a new Imperial Constitution, which was submitted as such to a vote of the people and confirmed by that vote.

(11) The Constitution of September 4th, 1870. This was the date when the news reached Paris of the French disaster at Sedan, which brought the Empire to ruin. A Provisional Government of National Defence was thereupon created, which gave way in February, 1871, to

the National Assembly.

In 1871 France was thus neither Monarchy nor Republic. But many remnants from the earlier constitutions survived. The position of the Assembly was not free from ambiguity; while some looked upon it as a Constituent Assembly, others considered it only a provisional body to restore order.

Too many constitutional experiments. And in 1871, the state of affairs was by no means tranquil. "The National Assembly formed a single Chamber, but there was no Constitutional Law to say whether it should continue as one Chamber, or how it should be replaced ....There was still an electoral system, and there was still a Judiciary. There was still a financial system, economic and political. It remained with the National Assembly elected in February to reconstitute the whole as part of its task of establishing order in the country. Yet there was nothing to show that this Assembly had the power to act as a Constituent Assembly...."[1] Adolphe Thiers had described the situation as "a vacancy of power."

Republic again. The Republicans, who had gained considerable power and influence during the declining days of the monarchy, now decided to form a republican government. The Assembly elected Adolphe Thiers as the chief executive. But he was a Constitutional Monarchist; therefore the Republicans refused to support the proposal of framing a constitution. Thus Thiers was left as a virtual President of the State. Ultimately, after peace had been signed on May 10, 1871, a supreme effort was made to restore order and give France a constitution. Charles Rivet, a friend of Thiers, had his constructive proposal adopted by the Assembly on 31st August, by 491 votes against 94. This is known as Rivet Law. According to it, Thiers was made President with power to appoint ministers responsible to the elective Assembly, and with the same term of office as the Assembly. In this way the Republic of 1871 became "the legal government of the country."

Efforts to make a constitution. Thiers' attitude, however, did not satisfy the Monarchists in the assembly, who proceeded to appoint a Constitutional Committee of Thirty to define the exact responsibility of the ministry. Though the ministers had already been declared as responsible to the Assembly, yet the position of Thiers, both as leader of the Assembly, and the Chief Magistrate, reduced that responsibility

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[1] *Select Constitutions of the World*, pp. 386-387.

to a mere farce. The Committee reported in February, 1873, and ultimately a compromise was arrived at, wherein it was agreed that "the President should communicate with the Assembly by messages to be read by his Ministers; that he might speak himself from the Tribune if he gave previous notice by message; but that the sitting should be suspended after he had finished speaking, the discussion to be resumed only in his absence."[1]

Circumstances forced the Assembly to settle constitutional questions of the first importance, and at its request the Committee of Thirty produced two Bills (May 19th and 20th) defining the legislative and executive powers and providing for the establishment of a second chamber. Before these Bills could be considered, Thiers was overthrown and Marshall MacMohan elected President for a fixed term of seven years, the Republicans protesting against such a long lease. Mac Mohan was allowed to exercise all his powers until the title of his office might subsequently be changed. In November (1873) a new Committee was appointed to submit drafts of Constitutional Laws. This Committee produced a draft Bill for the Organisation of the Public Powers, which formed the basis of the Law of February 1875.

The New Constitutional Laws of 1875. About this time another politician, Leon Gambetta, had acquired dominating influence in the Assembly. He was bent upon the establishment of a Republic with a bicameral legislature. When the Assembly met again in January 1875, the draft Bill was considered, and with a few amendments, (one of which related to the election of the President and was of great political import) it became the Constitutional Law of February 25, 1875.

The Assembly also considered another draft Bill prepared by the Constitutional Committee, respecting the organisation of a Senate. The Bill as amended became the *Constitutional Law of February 2, 1875.* It established a Senate which was really a concession granted to the Monarchists in order to secure their confirmation of the Republic.

On the motion of the Minister of Justice, a Bill to regulate the relations of the Public Powers was referred to the Constitutional Committee, and on receipt of the latter's report, the Assembly passed the Bill which became the *Constitutional Law of July 16, 1875.*

Thus were constituted the three Constitutional Laws of the year 1875, which formed the foundation of the French Constitution. Strictly speaking, these were the only Constitutional Laws on which depended

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[1] *Ibid.* p. 388.

a series of Organic Laws, the purpose of which was to implement the Constitution. In 1870 and 1884, however, two more Laws, better called Revisory Laws, were passed. The former (passed on July 18, 1879) repealed Article 9 of the Law of February 25, 1875, which had provided for making Versailles the seat of the Executive and the two branches of the Legislature. The Republican Party favoured Paris and this was agreed to.

In 1884, another attempt was made to revise the Constitutional Laws and the two branches of the legislature sitting in a joint-session as *National Assembly* discussed (4th to 13th August) the question of amending the Laws and finally embodied the decision in the *Revisory Law of 1884*. This completed the constitution of the Third Republic.

A mixture of laws. Besides the three Constitutional Laws and the two Revisory Laws, there were several Organic Laws passed to implement the former. "These Organic Laws rank higher than ordinary legislation and lower than the Constitutional Laws. They differ from the Constitutional Laws inasmuch as they may be amended or repealed in the ordinary course of legislation, whereas the Constitutional Laws, as has been seen, require a special procedure."[1] The Organic Laws had been passed to deal with Constitutional issues of a minor character, whereas the Constitutional Laws, and even the Revisory Laws, formed the fundamental basis of the constitution.

Constitution of The Third Republic

Not a single document. We thus see that the constitution of the Third Republic was not one single piece of legislation or statute. It was contained in a series of laws, passed from time to time, and embodying essentials of a constitution in its various aspects. Yet it did not resemble the English constitution, for whereas the French constitution could be brought together in one place by putting together all the laws (Constitutional, Revisory and Organic), the English constitution, apart from being contained in stray Parliamentary Acts and Statutes, spread over several centuries, is composed of unwritten but strong conventions also which, to all practical purposes, have the force of law.

Another important feature of this Constitution was the great continuity of the various epochs in French constitutional history; it was the

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[1] *Select Constitutions of the World*, p. 392.

product of an evolutionary process extending over nearly a century, retaining some of the important features of almost all the constitutional instruments. Mr. Joseph Barthelemy thus describes this evolution: "Nearly all the forms of government which have succeeded each other in France have left behind them, as it were, certain fertile alluvial deposits. The restoration bequeathed to her parliamentary government and the financial principles of a free country. The July Monarchy defined, developed, and consolidated these principles, and drew up the great laws still in force, dealing with connecting roads, expropriation, etc. The Republic of 1846 inaugurated a work of unification, and definitely established universal suffrage. The Second Empire is responsible for the election machinery (laid down in the dictatorial decrees of the Prince President on February 2nd, 1852), the liberty of coalitions and the distribution of authority between prefect and minister. The National Assembly gave France her departmental organisation (law of August 10th, 1871), and most important of all, her political organisation."[1]

Product of many revolutions. Thus the constitution of the Third Republic bore on its appearance the impress of the political revolutions that had visited the country. It was, therefore, not "a fine four-square building, whose parts are all harmoniously arranged according to a preconceived plan." On the other hand, it was like "an old family mansion, in which each generation has made some improvement, introduced some new feature, and left its mark."

A brief rigid document. Yet, it was a very small document consisting of only twenty-six articles which had a really constitutional character, leaving out some of the Organic Laws. This brief instrument gave to France a Parliamentary Republic "based upon the hope of a monarchy." It had been, however, likened to "a Cinderella slipping noiselessly between the parties who despise her." The constitution was really silent on several important matters. It was, however, rigid and could be amended by a prescribed process. The Law of February 25, 1875, itself foresaw the need of such revisions and modifications, and these had been made over since then, particularly in 1879 and 1884.

How it might be amended. Any proposal for an amendment to the constitution was first voted by the two chambers, each sitting separately and agreeing by a majority that there was need for a change in the

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[1] *The Government of France*, pp. 15-16.

constitution. Thereafter, the two Chambers united to sit in a joint session as the National Assembly (and for this purpose they sat not at Paris, but at Versailles). The National Assembly then amended the constitution by an absolute majority vote. But Organic Laws could be added or changed by the Ordinary process of law-making. There was, however, one important restriction to the making of constitutional changes, *viz.*, *the republican form of the constitution could not be changed by any means*. This was thus a fundamental clause of the constitution and "Any revision which would have for its object the substitution of a monarchical system for the Republic would be illegal and revolutionary."[1]

The Legislature in the Third Republic

Bicameralism adopted. The constitution established a unitary and parliamentary government with a bicameral legislature consisting of a Senate and a Chamber of Deputies, an imitation of the British system, though in working their parliamentary institutions, the French have not been able to copy the Englishmen.

The Senate. *The Senate*, the structure and powers of which were originally contained in the Constitution of 1875, but which were, later on, (by an amendment of 1884) included in the Organic Laws to be altered by the ordinary process of lawmaking, consisted of 314 members. Of these, 249 were elected, the remaining 75 were elected for life by the two chambers, under the law of 1875, but under the amendment of 1884, on the death of a life member, the vacancy was filled up by election in the ordinary way.

How elected. The elected members of the Senate were not directly elected by the people but by an electoral college comprising of four types of voters, *viz.*, delegates of the municipal councils of the communes, chosen generally on a population basis; the Deputies of the Departments; the General Councillors of the Departments; and members of the Councils of Arrondisements. The Senate thus represented, not only the individual interests of French citizens, but also the collective interests of the municipalities.[2] The number of communes being 37,983 their delegates far outnumbered those of all other electoral colleges, hence the truth of Gambetta's remark that the Senate was

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[1] R. Poincare, *How France is Governed*, p. 163.

[2] R. *Ibid.* p. 211.

"the Great Council of the Communes of France." The senators were, thus, elected by electoral colleges, the members of which were elected by universal suffrage. In short, the whole nation indirectly elected the senators. This was done in order to make the upper chamber more conservative. The Senate was a continuous body; it was elected for nine years; one-third of it being renewed every three years. Being smaller in size, it was more deliberative and examined proposals in a better way than the lower house.

Quality of members. The Senators were generally professional men—physicians, lawyers, a few agriculturists, commercial magnates and landed aristocrats—they were generally better off than the deputies; and possessed greater experience. Almost all the political parties of the Chamber were represented in the Senate, though the Monarchists and Socialists were weaker than in the Chamber. In the legislative field, the Senate had generally co-equal powers with the Chamber, though money bills originated in the latter. The Senate could only amend financial bills and reduce taxation but not increase it.

Conflict with the other chamber: how solved. In case of conflict between the Chamber and the Senate, a conference was held between two *Commissions*, one appointed by each House, which debated together but voted separately. If an agreement was not reached by this method, the measure failed. Such cases were, however, very rare, because the Senate, knowing its own weakness and being less of democratic nature generally yielded.

Other powers. Apart from its legislative function, the Senate exercised some special powers. Its previous consent was necessary for the dissolution of the Chamber. It was only after the President of the Republic had taken this consent of the Senate, that he could dissolve the Chamber. The Senate had given this consent only on one occasion. In 1876, the Chamber contained a republican majority, and Marshall MacMohan, a monarchist, was President of France. He sought to overcome the republican character of the Chamber and this he accomplished by obtaining the consent of the Senate (by 149 votes against 130, a very small majority indeed) for the dissolution of the Chamber on 8th March. Thus, "A constitutional right had been used in an unconstitutional spirit: not in order to serve the electorate, but directly to thwart it."[1] Since then, this power of the Senate had fallen

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[1] *Ibid.* p. 672.

into disrepute. The Senate also acted as a Supreme Court of Justice to try cases of impeachment sent by the Chamber of Deputies. In this regard, the French Senate resembled the American Senate, though this practice was not in conformity with the theory of separation of powers and risked the introduction of party feeling in a judicial action. Secondly, the Senate sat as a court of justice to try those cases, too, which involved attempts to overthrow the security of the Senate by any persons whatsoever. Since 1875 there had been only two such cases, in 1889 and 1899, though every year the Senate elected a commission to hold inquiries in cases that might be brought before it.

The Chamber of Deputies. *The Chamber of Deputies* was the lower house of the French legislature. Like the British House of Commons and, in fact, like the lower house in many parliamentary constitutions, it had become much more powerful than the Senate or the upper house. It had sometimes been reproached for having destroyed the balance of power which the 1875 Constituent Assembly tried to realise, and for having destroyed it to its own advantage.[1] Hence, the Chamber was the real place where French democracy exercised its will.

Franchise. The 612 deputies were elected for a period of four years. For purposes of election, there was universal suffrage, all citizens of at least 21 years of age being voters. But soldiers, sailors, bankrupts, criminals and certain officials were not voters. Any elector of at least 25 years of age whether poor or rich, was eligible for election to the Chamber. Members of families who had ever ruled in France were not permitted to seek election.

Form of election. France had tried several experiments in her system of elections, ranging from proportional representation and 'one man one vote' to the present method. The system of election (called *scrutin de liste)* introduced in 1817, enabled each voter in a department to vote for as many Deputies as the Department was entitled to send. But in 1876, the system called *scrutine de arrondisement* was substituted and according to it the Department was divided into several one-member Arrondisements, and each elector could vote for only one Deputy. In 1885, the *scrutin de liste* was re-introduced and was again changed in 1889. In 1919, France once again reverted to *scrutin de liste* with imperfect proportional representation, and a candidate who secured an absolute majority of votes was declared elected.

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[1] Barthelemy, *The Government of France*, p. 53.

If, however, such majority was not obtained, there was a second ballot at which only a relative majority enabled a candidate to get elected. At that time, Gambetta believed that the system "would tend to raise the quality of candidates and diminish the power of local cliques and wirepullers but this did not prove to be the case."[1] Hence on 12th July, 1927, the old system of *scrutine de arrondisement* was re-introduced. According to this system the country was divided into single-member *arrondisements*, each elector having one vote and there being one member for each 75,000 voters.

Speaker, a party man. The Speaker of the Chamber was a party-man, and unlike the Speaker of the British House of Commons, he favoured "with due regard to fair play, the party to which he belonged before his elevation." He did not usually intervene in debates. He was, however, a very powerful figure in politics and had sometimes been called upon to form a ministry. The Speakership had often proved to be the stepping stone to Presidentship of the Republic.

Powers of the chambers. As for legislative powers, the two chambers were co-equal, though financial proposals originated in the Chamber of Deputies. They met in a joint session to form the National Assembly in order to undertake revision of the Constitution. They also united to form the electoral college (then called Congress) for electing the President of the Republic.

The Executive

Parliamentary republican executive. Although France established a parliamentary executive (after the British model), the Constitution of 1875 adopted Presidency in place of Monarchy; rather "the National Assembly of 1870-75 drifted into the Presidency then created it with a full consciousness of the nature of their act." When Napoleon III was dethroned and republic proclaimed, the President stepped in.

President as the head of the state. And though the constitution did not expressly lay down that the President was vested with real executive authority, yet the enumeration of his powers showed that some of these were 'executive in a strict sense,' whereas others were of a general legislative character. The problem before the French

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[1] *Modern Democracies*, Vol. I. p. 270.

was whether the executive should be made responsible to the legislature or the people. The ultimate solution was discovered in instituting an elective President with a fixed term (and hence irremovable), chosen by the legislature, and a cabinet responsible to and removable by the legislature.

President: how elected. The President was elected by the National Assembly, *viz.*, the Chamber of Deputies and the Senate, sitting in a joint session for the purpose at Versailles. He was elected by an absolute majority of votes, and, therefore, when there were several candidates successive ballots were held till one of them got the requisite majority. This method differed from the American and German methods. He was elected for a term of seven years, and was eligible for re-election, in fact for as many terms as he desired. But in actual practice, the National Assembly was averse to allowing a re-election nor had any President been very keen for re-election. There had been only two cases of re-election, *viz.*, Jules Grevy was re-elected in 1886, but he served only two years of his second term, and Albert Lebron was re-elected in 1939. Of the first-twelve Presidents, five resigned, two died in office (including Sadi Carnot who was assassinated in June, 1894) and five served their full terms.

Powers and status of the President. The President negotiated and ratified treaties but he could not declare war without the previous consent of the two Houses of the legislature. He could be impeached for high treason before the Senate, but the provision of a minister's counter-signature to ensure validity of his acts prevented him from committing acts of treason. He enjoyed all dignities, prestige, and outward ceremony belonging to the head of a republic. He received a handsome salary and had a palace to live in. But he had no real executive powers; in this sphere he was simply impotent. This did not, however, mean that aspiring and ambitious persons did not try for Presidency. In fact, only Speakers of the Chamber and Prime Ministers had usually been elected Presidents. When Clemenceau, a distinguished statesman, referring to the powers and qualifications of the President, said with regard to the kind of man required to be elected: "I vote for the most stupid," he only meant that the exercise of powers did not need a very capable ruler for the simple reason that the President was merely a nominal head of the French executive, weaker than the British King, and far more so than the American President. The French President, in fact, neither reigned nor governed. The real executive power

rested with the cabinet which was the responsible and removable part of the executive branch of the government.

The Cabinet

Principles of the cabinet system. The French cabinet, as a political institution of the parliamentary type, came into existence in 1875. The constitution of that year laid down the following principles according to which:

(1) All acts of the President were to be countersigned by a minister.

(2) The ministers were collectively responsible to the chambers for the general policy of the government, and individually responsible for acts of their respective departments.

(3) The President was responsible only for high treason.

(4) The President could communicate with the chambers only through messages read before them by some minister.

(5) A minister might speak in any house of the legislature.

(6) When a law had been passed by the legislature, it was promulgated by the President countersigned by a minister, unless within a month of its receipt, the President sent it back for reconsideration by the chambers. In actual practice, cabinet responsibility (collective and individual as above indicated) had come to mean that when the legislature disapproved of the policy of any minister, the cabinet resigned and a new one was formed with practically the same personnel as the outgoing cabinet, with the exception of the minister whose action brought about its fall. This practice was the result of the inability of the cabinet to dissolve the Chamber and appeal to the country. The chamber of Deputies always lasted its full term of four years and the cabinet had really "no weapon with which to ward off onslaughts, or to attack and disperse a parliamentary conspiracy, even the most factious."

Failure of parliamentary government in France. France adopted parliamentary government in imitation of the British system, but failed to work it successfully. The conditions necessary for the success of cabinet responsibility, of the British type, had been largely absent in France. Moreover, there had been certain other factors, peculiar to France, that had prevented the establishment of traditions and conventions which could impart the necessary stability to the French cabinet system. The instability of the French cabinet had been

due to several factors:

Causes of the Instability of the Cabinet

1. Change in cabinet does not imply change in policy. Firstly, in France the fall of a cabinet did not imply, as it did imply in England, a change in the policy of administration. An English cabinet resigns, generally, when its policy is disapproved by Parliament, *i. e.*, the House of Commons, or by the general electorate in general elections, and is succeeded by another cabinet with a different policy which has the approval of the Commons, and, therefore, of the electorate. In case, however, a British cabinet chooses to challenge the view of the Commons and appeal to the country, the House of Commons is dissolved and fresh elections held in order to ascertain the will of the electorate. Such power did not lie with the French cabinet to demonstrate the wisdom of its policy. The Coles described this curious system in these words :

> "For as the fall of a French Cabinet does not, as generally in Great Britain, imply the dissolution of the Chamber but merely a "reconstruction" which often results in the formation of a new Cabinet bearing a remarkably close resemblance to the one which has just fallen, the list of 'Cabinets' no more indicates real shifts in the policy of the French Government than the list of 'scenes' in the ordinary text of a Shakespeare play indicates real shifting of the scenery."

The result was that the fall of a French cabinet did not change the policy of the Government but implied a reshuffling of the personnel of the cabinet. A new cabinet contained, often times, eighty per cent of ministers of the outgoing cabinet; sometimes the head of the new cabinet was the outgoing Prime Minister who had simply kept out in the newly constructed cabinet a few of the recalcitrant colleagues of his former ministry.

2. No cabinet control over legislature. Secondly, several changes in the French cabinets took place on account of the absence of cabinet control over legislation. In England the cabinet controls the House of Commons, introduces legislation of its choice and successfully prevents members from retarding the progress of Government measures. In France, on the other hand, the cabinet was practically at the mercy

of Commissions of the Chamber of Deputies for getting necessary legislation passed in order to give practical effect to its policy. Every measure that was introduced by the cabinet was referred to the Commission concerned, and as this commission often contained a majority hostile to the cabinet (due to the existence of the many groups in the chamber), the government measure ultimately emerging from the Commission was so different from the original one sponsored by the cabinet that the latter did not enthuse over it.

3. No cabinet control over finances. Thirdly, the French cabinet did not control the financial policy. In England, no appropriation of money is allowed unless it is desired by the Crown, *i. e.*, the cabinet which frames the budget and introduces it into the Commons for approval. The Opposition may criticise it, but it cannot alter the budget without bringing about the fall of the cabinet. Members of the House, afraid to face the country in a possible general election in case the cabinet appeals to the country if its budget is not passed, do not interfere with the budget. In France, the Deputies had no such fear of having to face a fresh election fight due to the French cabinet's inability to have the chamber dissolved earlier than its normal term, and therefore they unhesitatingly used their power to change the budget proposals of the cabinet which was then compelled to govern with a budget not liked by it. As a result, the cabinet sought an early opportunity to resign so that in the reconstructed Government a few leaders of some of the hostile groups in the Chamber might be cajoled by offer of seats on the new cabinet.

4. Too many groups in the Chamber. Fourthly, the presence of many groups, and not parties, in the Chamber, prevented the chances of a stable cabinet with a strong policy. Due to the old traditions and the great many political experiments as well as the system of elections, a large number of political groups had been formed in the Chamber, with the result that no political group was strong enough to form a stable government which might remain in office for a long time. Consequently, every French cabinet was a coalition cabinet formed by a temporary alliance between a number of political groups, sometimes of groups with diametrically opposite policies and programmes—and, therefore, it was subject to all the weaknesses of a coalition government.

5. System of interpellations. Fifthly, the system of interpellations in the Third Republic was also responsible for the instability of the cabinet. The Friday interpellations were used not merely to elicit information but even to discuss the policy of the cabinet. In case

the reply of the cabinet was considered unsatisfactory a debate followed and vote was taken. If the Chamber disapproved of the cabinet's reply, the cabinet resigned.

6. No collective cabinet responsibility in the real sense. Sixthly, there was no real collective responsibility in the French cabinet. Drawn from different political groups, the members of the cabinet could rarely be trusted to support each other in the Chamber, not from direct ill-will, but because there was insufficient unity of direction in a body thus composed. Naturally, therefore, pretexts were easily found for overthrowing the cabinet.

For these reasons, the French cabinet was a very short-lived body in France. During the first forty-three years after 1875, there were about 64 cabinets, giving an average of 9½ months for each cabinet. Some of them, however, continued for two to three years, while others lasted for only a couple of days or even hours. It is very interesting to observe the contrast that during the same period there were only five cabinets in England.

The Fourth French Republic of 1946

Early in September 1939 the Second World War broke out. France was one of the first countries on the Continent to face the fury of the advancing Hitlerian hordes. The Third Republic proved unequal to the German might and consequently in 1940 it suffered a crushing military defeat. France was occupied by the Germans under terms of surrender agreed to by the French government headed by Marshal Petain, who transferred the seat of this German influenced government to Vichy. The French resistance movement organised from Algiers received the support of the Allies, the United States, Great Britain and the Soviet Union. A provisional government was set up by General de Gaulle who called on Frenchmen to continue resistance against the Germans from the French Empire and from England. Thus was launched the "Free French" movement and a French Committee of National Liberation was set up in Algiers. A Consultative Assembly consisting of representatives of all the former French Parliamentary parties was established in September 1943. This might be considered the emergency government for France.

About the middle of 1944 the British and American armies successfully crossed into France and started pushing out the Germans. Consequently in August 1944, the French government moved from Algiers

to Paris. The Consultative Assembly was further enlarged and the new government under the leadership of de Gaulle "administered the complicated domestic and imperial affairs of France, and conducted foreign policy."

On October 21, 1945, a Constituent Assembly (earlier promised by the de Gaulle government) was elected to draft a new constitution for France and to govern the country till the new constitution came into force. Simultaneously with the task of governing the country, the Assembly set up committees to prepare a draft constitution. As the Assembly had been elected on the basis of proportional representation, it contained three groups of parties; the Left consisted of the Communists, the Socialists and their supporters, with a total strength of 331 members; the Centre consisting of the MRP (*Movement Republican Populaire*) with 145 members; and the Right consisting of the Democrats and the various smaller conservative groups with a total strength of 51, including the unaffiliated members. Such was the colour of the Constituent Assembly elected in October 1945.

The Constituent Assembly through its Committees, prepared the first draft of the constitution based on two important principles: firstly, the establishment of social and political rights for citizens, regardless of sex; secondly, the provision for a more decisive political leadership to ensure stability of government and the pursuit of a vigorous political programme. It was based on the general principles of socialism, due to the preponderance of the Leftists and therefore provided for a unicameral legislature. The draft was submitted to the direct vote of the people who rejected it by 10,000,000 votes as against 8,900,000, though the Assembly had earlier approved it by 309 against 249. This necessitated the election of a new Constituent Assembly in June 1946. In this second election the Left obtained 308 seats as against 162 of the Centre and 60 of the Right. The new Constituent Assembly gave all support to the provisional government ministers in the actual administration and undertook the work of preparing another draft constitution through newly set up committees and when it had approved it, the new draft was again referred to the people who accepted it on October 13, 1946, by 9,297,470 votes against 8,165,459. This constitution ushered into existence the Fourth Republic of France. The constitution came into force on December 24, 1946, after the new Assembly had been elected on 10th November, 1946, with the Left consisting of 320 members, the Centre 160 members and the Right 94 members.

Features of the New Constitution

Principles of the constitution and rights of citizens. The constitution of the Fourth Republic opens with a Preamble which states: "On the morrow of the victory of the free peoples over everyone has the duty to work and the right to obtain employment; every one is free to join any trade union and to rights and interests through that union. The workers have the right to strike within the framework of the laws: they can participate in collective bargaining through their representatives. Orphans, destitute and crippled or disabled persons can obtain from the community decent living. All children and adults are guaranteed equal access to vocational training and to culture. The constitution guarantees to all, particularly to children, mothers and aged persons, protection for health, material security, rest and leisure. Women are guaranteed equal rights with men in all domains.

In the international field, the constitution declares that on the basis of reciprocity, France consents to the limitations of sovereignty necessary for organisation of peace.

The constitution declares that France is a republic—indivisible, secular, democratic and social; its motto is "Liberty, Equality, Fraternity" and its principle is "government of the people, for the people and by the people". National sovereignty is vested in the French people who exercise it, in constitutional matters by the vote of their representatives and by the referendum, and in all other matters through their deputies in the National Assembly elected by universal, equal, direct and secret suffrage. All French nationals of both sexes, who have reached the age of majority and enjoy civil and political rights are voters.

The Legislature

The Legislative power in the fourth republic, is exercised by the Parliament which is composed of the National Assembly and the Council of the Republic. Both the chambers are elected on a territorial basis. The National Assembly, which is the popular Chamber, is elected by universal direct suffrage, while the Council of the Republic, which is the Upper Chamber, is elected by indirect suffrage through units composed of Communes and Departments.

The National Assembly is elected by the people according to the law passed on 5 October, 1946, which lays down that candidates will

be elected from party lists at a single ballot, with proportional representation. The total number of seats was fixed at 619 distributed thus: Metropolitan France 544, Algeria 30, and French territories overseas 45. The first elections under the new constitution took place on 10 November, 1946. The first elections to the Council of the Republic took place in the same month. It now consists of 320 members elected thus: 253 by metropolitan territorial Collectivities; 14 by the Algerian territorial Collectivities; 44 by electoral colleges in overseas territories; one by the French citizens in Indo-China; 2 for the French in Tunisia, and 3 for Morocco; and 3 by French citizens living abroad. On 16 January, 1947, both Chambers met for the first time.

The duration of the National Assembly, its mode of election and other cognate matters are fixed by law. The term of the members of the Council of the Republic is six years, half the members retiring after every three years. The National Assembly elects, by means of proportional representation, councillors not exceeding one-sixth of the total number of the Council of the Republic. The total membership of the Council cannot be less than one-third nor more than one-half the total number of members of the National Assembly.

Each Chamber is the judge of the eligibility of its members and the regularity of their elections.

Both the Chambers hold sessions simultaneously. The National Assembly convenes an annual session on the second Tuesday of January each year. The sessions of the chambers are public, but any chamber may convene a secret session when necessary. The two Chambers meeting in a joint session elect the President of the Republic.

Rights and privileges of members. Members of Parliament enjoy certain rights and privileges as in other democratic countries. They enjoy freedom of speech inside Parliament, *i. e.*, they cannot be prosecuted, detained or judged on the basis of opinions or votes expressed by them in the exercise of their functions as legislators. No member of Parliament may, during his term as such, be prosecuted or arrested for a criminal offence except with the permission of the chamber of which he is a member. Members of Parliament receive compensation and allowances fixed by law. No person can be a member of both chambers at the same time. And no member of Parliament may at the same time be a member of the Economic Council or of the Assembly of the French Union.

How the chambers work in practice. Both chambers elect

their respective secretariats at the beginning of each annual session, by means of proportional representation, reflecting in its composition the various party groups according to their strength. The President of the Republic convokes the Parliament. Meetings may be held when demanded by the Premier or one-third members of the National Assembly. The National Assembly being the popular chamber, its powers are definitely greater than those of the Council of the Republic. The National Assembly alone may vote the laws; it cannot delegate this right (Art. XIII). The premier and members of Parliament can initiate legislative measures or resolutions. The Upper Chamber, i. e., the Council of the Republic is only a revising or delaying chamber. Members of the Council may initiate measures which are deposited with its Secretariat and then transmitted in the original form to the Secretariat of the National Assembly. Bills and laws proposed by members of the Assembly are deposited with its Secretariat.

How laws are made. At first the National Assembly studies the projects deposited with or transmitted to its Secretariat, in the committees which it appoints for the purpose. After a measure has been passed by the National Assembly, it is sent to the Council of the Republic. The council is required to give its opinion within two months of the receipt of the measure. In the case of budget, this period of two months may be reduced if desirable to such an extent as not to exceed the time expended by the National Assembly in its examination and vote. If necessary, the National Assembly may take up an urgent matter and for that purpose reduce the period of two months allowed to the Council to give its opinion. If the Council conforms or fails to give its advice within the prescribed period, the law is promulgated as voted by the National Assembly.

In case, the Council of the Republic does not confirm or proposes amendments, the National Assembly reconsiders the law along with the amendments, if any, proposed by the Council. The Assembly may reject in whole or in part these amendments. The Assembly then votes upon the measure by public ballot by an absolute majority of the members composing it.

The National Assembly, however, possesses the full and undivided power over the purse. Budget proposals are initiated by the Assembly; such a law should contain only financial dispositions. The National Assembly supervises the account of the nation through an accounting court.

Amnesty within the republic can be accorded only by law made by the Parliament.

The Economic Council. The French constitution bears the impress of socialistic tendencies which have, during the last decade, been a prominent feature of French politics. The constitution provides for the establishment of an Economic Council, with almost similar functions as the National Economic Council established under the Weimar Republic in Germany. The status of the French Economic Council is fixed by law, unlike the German Economic Council. The French Economic Council is an advisory body which examines and advises on proposed laws that fall within its domain. The National Assembly seeks the advice of the Economic Council before discussing certain categories of measures and enacting them into laws. The French Cabinet may consult the Economic Council on such matters as it deems proper. But the Economic Council must be consulted on the adoption of a national economic plan for the full employment of men and for the rational use of material resources of the republic. To what extent the Economic Council will succeed in satisfying the socialists remains to be seen. The chances, however, are that it might fail like its German prototype.

The Executive of the Fourth Republic

The President: his position and powers. The Executive branch of the Government of the Fourth Republic may be studied, as usual, under two heads; the nominal Executive head, *i. e.*, the President and the real Executive, *i. e.*, the Cabinet. The head of the state is the President elected by the two houses of the Parliament sitting in a joint session for the purpose. He is elected for a seven year term. The same person may be re-elected for a second term, but no further. Members of families that have reigned in France are ineligible for the office of President. Besides being the head of the state and as such presiding on all ceremonial occasions, the President has certain definite powers and responsibilities. He presides over the Cabinet and has custody of the reports of its sittings; he presides over the Superior Council and the Committee of National Defence and assumes the title of chief of the army; he presides over the Superior Council of Magistracy and exercises the right of pardon in that capacity.

Powers of appointment. The President of the Republic exercises considerable power of appointment. He appoints the Premier after

the usual consultations, and on the latter's advice other members of the Cabinet, by a decree. Besides, the President appoints (1) the Grand Chancellor of the Legion of Honour, (2) Ambassadors and envoys extraordinary, (3) members of the Superior Council and of the Committee of National Defence, (4) Rectors of Universities, (5) Prefects, (6) chiefs of central administration, (7) general officers, and (8) representatives of the government in overseas territories.

President and the legislature. As head of the state, the President of the Republic promulgates laws passed by Parliament, within ten days of the receipt of the measure from the National Assembly. This period may be reduced to five days if the National Assembly declares, by a resolution, urgency in a particular case. The President may, if he so likes, ask the legislature, within the period allowed him, to reconsider the measure. In case the President fails to promulgate the law within the period, nor sends it back for reconsideration, it is promulgated by the President of the National Assembly. The President of the Republic may communicate his views on any matters to the legislature by messages addressed to the National Assembly.

President is the constitutional head. These powers of the President of the Republic are, no doubt, far greater than those enjoyed by the President under the Third Republic but definitely less than those of the American President, for no official action of the President of the Republic is valid unless countersigned by the Premier and one more minister. He is thus a constitutional head, acting on the advice of the Cabinet.

The Cabinet: how formed and how it works. The real executive power is vested in the Cabinet which is responsible to the legislature, *i. e.*, to the National Assembly. The method of formation of the Cabinet is different from the usual method adopted in other parliamentary countries. As Article XLV states: "At the opening of each legislature, the President of the Republic, after the customary consultations, designates the Premier." To ensure the formation of a stable ministry, the Premier, before constituting his Cabinet, seeks confidence of the National Assembly, by a definite motion. If the Deputies, by an absolute majority, express their confidence in the Premier, the latter proceeds to select his colleagues and submit their names to the President of the Republic who issues a decree.

Premier's powers. The Premier exercises certain special powers. He assures the execution of all laws passed by the legislature. He appoints all civil and military officials except those appointed by the

President under articles XXX, XLVI and LXXXIV of the constitution. Further, the Premier assures the high direction of the armed forces and organises and coordinates measures for national defence. But all these acts of the Premier are countersigned by the ministers concerned. The French Premier, therefore, occupies constitutionally a higher status than that enjoyed by Premiers in other parliamentary governments.

The Cabinet and the Legislature. The constitution lays down in clear terms the nature of responsibility of the Cabinet and the individual ministers. They are collectively responsible to the National Assembly (and not to the Council of the Republic) for the general policy of the Cabinet and individually for their personal actions. The Premier, if he thinks it necessary, may ask for a vote of confidence of the National Assembly by a positive motion, after he has obtained the consent of the Cabinet. Only an absolute majority of the National Assembly can refuse confidence. In the case of refusal of confidence the whole Cabinet resigns. Similarly a vote of censure, if passed by the National Assembly by an absolute majority (after a full day from the deposit of the motion) the Cabinet as a whole resigns. As the National Assembly is elected on the basis of proportional representation, there are many parties inside it. The multi-party system in the Third Republic was primarily responsible for the instability of the Cabinet, and to ensure greater stability of the Cabinet, the new constitution provides that if within the same period of eighteen months two ministerial crises occur, the Cabinet, after the advice of the President, may seek dissolution of the Assembly. The President then issues a decree pronouncing the dissolution of the Assembly. When the Assembly has been dissolved, and before the new one meets, the Cabinet, except the Premier and the Minister of the Interior, remain in office for the despatch of current business; the President of the Republic designates the President of the Assembly as Premier for the interim period. This new Premier then designates, in consultation with the Secretariat of the Assembly, an interim Minister of the Interior. A new Assembly is elected at least twenty days and not more than thirty days after the dissolution, and it meets on the third Tuesday after the general elections.

Despite the above mentioned provisions for dissolution of the Assembly and stability of the Cabinet, the multi-party system which is the result of the French tradition and the system of election, the Cabinet in the Fourth Republic has proved to be almost as unstable as in the

Third Republic. Since the liberation of France in 1945, there have been twenty-six cabinets during these five years, the last having been formed on June 2, 1958. No Cabinet has asked for a dissolution of the Assembly as none was sure to obtain a favourable verdict of the electors.

The ministers have a right to attend and speak in any Chamber. The Premier may delegate his powers to any minister. In case of vacancy by death, the Cabinet designates one of its members as Premier to exercise provisionally the functions of Premier until a new Premier is appointed by the President of the Republic.

The President of the Republic and the Ministers owe certain responsibility for their actions. According to Article XLII, the President may be tried for high treason, upon a vote by the National Assembly, before the High Court of Justice (which is a body elected for the purpose by each new legislature at its first meeting). Similarly the "Ministers are responsible penally for crimes and offences committed in the exercise of their functions" (Art. LVI). The National Assembly decides, by secret ballot and by an absolute majority, whether the President or the Ministers, as the case may be, be tried for treason or crimes, respectively.

Amendment of the Constitution

The constitution lays down detailed and clear method for its revision. There are two restrictions regarding the scope of revision of the Constitution, *viz.*, the republican form of government cannot be the subject of a proposal for revision of the constitution; secondly, no constitutional revision affecting the existence of the Council of the Republic can be made without the concurrence of the Council itself or without referendum. During the period of occupation, of all or in part, of the metropolitan territory by foreign forces, no procedure for revision of the constitution can be started or continued.

Subject to the foregoing restrictions, the revision of the constitution can be made thus: the National Assembly, first of all, adopts a resolution, by an absolute majority of its members, that the constitution be revised (This resolution is to set forth the object of revision). This resolution is then referred to the Council of the Republic. If the Council also adopts the resolution by a similar majority, or in case the Council fails to do so but the National Assembly again passes the resolution under the same conditions, the Assembly drafts a bill

containing the proposed amendment. The bill is then submitted to Parliament and voted by a majority as in the case of ordinary laws. It is then referred to the people for their direct vote. The amendment is not referred to the people but promulgated as law if, (*i*) it has been adopted by the National Assembly in a second reading by a majority of two-thirds, or (*ii*) it has been voted by a majority of three-fifths by each of the two houses. This shows that the method of amendment of the French constitution is very peculiar, the constitution falling largely within the categories of rigid constitutions. Referendum for revision of the constitution except under the two conditions specified above, gives the citizens real control over the constitution.

There is a constitutional committee, presided over by the President of the Republic, and consisting of, besides the President, the President of the National Assembly, the President of the Council of the Republic, and ten members elected (seven by the National Assembly and three by the Council of the Republic) by the method of proportional representation, from outside Parliament. The function of this Committee is to determine whether a particular law passed by Parliament entails a revision of the constitution. If it decides that a particular law does entail revision of the constitution, it is not promulgated until the necessary revision has been effected.

The Fall of the Fourth Republic

The constitution of the Fourth Republic has not proved to be a stable instrument of government. The cabinet instability of the former Republic continues. The French Empire abroad began to crumble. The loss of French Indo-China heralded a new movement in the dismemberment of the French Empire. The Rightists in Algeria (despite the provisions in the constitution of the Fourth Republic for a French Union including the Departments overseas) created a new problem for the French Government, by trying to suppress the rising wave of Algerian nationalism.

In June 1958, General de Gaulle assumed the office of Premier on the condition that for six months he be given full powers to re-establish stability and bring forward a new constitution containing provisions for a strong and more powerful executive. A new constitutional draft was prepared and put to referendum on September 28, 1958, not only in Metropolitan France but in all parts of the French Union. Any part of the Union voting 'No' to the new constitution was to be

granted full independence. As a result of the referendum, French Guinea (which voted by 97% against the draft) was declared independent.

Voting for the Fifth Republic

Voters flocked to the polling booths for the constitutional referendum in unprecedented numbers.

Out of the registered electorate of 26,606,948 for the whole of Metropolitan France, including Corsica, only 4 million failed to vote. This means 85 per cent of the electorate voted and only 15 per cent abstained—an all-time low record for abstentions. Those voting "yes" endorsed not only the General's proposed Constitution but also his broad policy of a strong and stable Government in the pursuit of a modern and vigorous France, and the defeat of Communism.

The "yes" votes totalled 17,666,828 and the "no's" 4,624,478. Thus 79.25 per cent of those who went to the polls in France said "yes" to Gen. de Gaulle and "no" to the Fourth Republic and its long record of governmental instability and paralysis.

Near-final results from Algeria showed a tidal wave victory for Gen. de Gaulle's new Constitution and a crushing defeat for the Algerian insurgent National Liberation Front.

Out of 82 per cent of the electorate which voted in spite of insurgent threats of reprisals, 97 per cent were in favour of the Constitution with the remaining 3 per cent made up of "no" and spoiled ballot papers.

The percentage is based on provisional official figures for 3,157,450 votes counted. The total Algerian electorate is 4,222,890.

Other African territories of France, with the exception of French Guinea, also solidly voted "yes," most of them by an average of 85 per cent.

In the Caribbean area, Martinique and French Guinea voted "yes" by 87 per cent and 85 per cent, respectively, while the "yes" percentage in French Somaliland, East Africa, was 65.

The people of St. Pierre et Miquelon, France's tiny islands off Canada's east coast, also voted heavily for the Constitution in an orderly poll.

A big vote in favour was also cast on Reunion Island, in the Indian Ocean.

Communist Defeat. One of the most significant features of the referendum vote in Metropolitan France is the failure of the commu-

nists to persuade a big part of their traditional voters to believe in the accusations of dictatorship and fascism made against Gen. de Gaulle by the communists.

Between 1 million and 1.5 million people who voted communists at the general elections of 1956 this time voted "yes" for Gen. de Gaulle.

Out of the total "no" vote of 4,624,478, officials estimated that nearly 700,000 were from non-communist voters, leaving a communist vote in the referendum of under 4 million, whereas in the 1956 elections the communists polled 5,454,589 votes.

The Minister of the Interior, M. Emile Pelletier, described the result of the referendum as "magnificent." "It is a historic vote; the new Constitution has been adopted," he said.

Visit to Algeria. Gen. de Gaulle's prestige, it is generally agreed, stands higher than at any time in his career.

But his Government's first move as a result of the power given it by the referendum vote would be to strengthen the hands of the police considerably in dealing with Algerian terrorists in Metropolitan France, the Interior Minister told reporters.

The Constitution approved by this vote is designed to abolish the governmental instability of the past and to open the door to free and closer relations between France and her African territories.

It increases the executive powers of the President of the Republic, makes it impossible to overthrow the Government except by an absolute majority of Parliament, and provides the framework for rapid and peaceful evolution towards self-government for France's overseas territories.

The Constitution legally came into force on October 5. Until a new Parliament is called, a President elected and a Government formed, Gen. de Gaulle will have almost unlimited powers.

Gen. de Gaulle has to discuss the referendum results and the form of voting in the general elections for a new Parliament due to be held in November now that the new Constitution has been approved.

Having already by the referendum vote given Moslems and Europeans alike a "full shareholding" in the future of the Republic, Gen. de Gaulle will no doubt allow this process of political equality to develop naturally while the armed forces make a new effort to crush what remains of the Fellagha insurrection.

What is called for in Algeria are practical measures rather than high-sounding political declaration. Protection of farms and citizens against terrorism must be extended and economic development fostered. Gen.

de Gaulle's Special Minister, M. Andre Malraux, has announced that one of the regions of Algeria would be turned into a model development area along the lines of the Tennessee Valley Authority.

Meanwhile, there is a controversy about what a "yes" from Algeria to the new Constitution means. For Europeans and the army it means "integration," in other words, Algeria's becoming a province of France on the same basis as, say, Alsace or Britanny. This would give all the 9 million citizens, Moslems and Europeans alike, the same rights and dutics.

For Moslems a "yes" vote is thought to mean they favour the continued presence and protection of France, both militarily and financially, rather than being left to the care of the insurgent leaders.

The General himself has specifically avoided using the word "integration" during his campaign on behalf of the Constitution. He has done so probably because the word itself is ill-defined and not because he is opposed to the broad conception of making all people in Algeria—Moslems and Europeans alike—"equal citizens with a full shareholding in France."

In practice, integration is on the march. The institution of a single voting list for all, the adding together of the votes cast in Algeria and in Metropolitan France, the future election of Algerian deputies to the National Assembly—all constitute integration on the political plane.

Of possible significance in this connection is the fact that it is becoming customary to hear the French Radio referring to the border between Algeria and Tunisia as the Franco-Tunisian border.

The next step in Algeria on the political plane is likely to be the general elections to the first Assembly of the new Fifth Republic. It is with the Algerian representatives, four out of five of whom will be Moslems, that the General expects to be able to talk business about the future status of Algeria.

Leading opponents of Gen. de Gaulle's Constitution had little influence over their own townsfolk in the referendum.

At Saint Cere, home town of the Right-wing shopkeepers' leader, M. Pierre Poujade, who urged rejection of the Constitution, 1,292 voted 'yes' and 543 voted 'no'.

A Few Incidents. Shortly after the close of the referendum polling in Lorquin near Metz in eastern France, two North Africans drove up to the police headquarters and opened fire, seriously wounding a policeman stationed outside.

In the same district the body of a North African was found in a se-

cluded wood with his throat cut and his hands tied behind his back.

REUNION ISLAND: Two incidents were reported during the voting. A man was stabbed to death while putting up posters, and another was seriously wounded by a gunshot wound. Three arrests were made.

ALGIERS: An official spokesman said that only one terrorist incident directed against a polling station had been reported. He told reporters that in Constantine, eastern Algeria, a grenade hurled in front of a polling station wounded a blind Moslem. But it caused no panic.

Twenty-seven people were injured when a terrorist bomb, hidden in an abandoned van, exploded in the centre of St. Denis Du Sig near Oran, western Algeria. Unconfirmed reports said two of the injured later died.

The Fifth Republic

According to Martin Harrison, twelve years and a referendum ago General de Gaulle gave warning that the Fourth Republic was doomed to confusion and impotence. As that Republic was dying in May, the General found history on his side. It was the inadequacy of the Constitutional texts more than the failings of the Republic's leaders, he said, that had brought the State "rushing headlong into degradation." True to his word France is now to adopt a new Constitution. The new institutions are to be "strong, stable, efficient enough to let France match her destiny." No longer are the fleeting Cabinets to be the music-hall joke of the world.

"Stability," "authority": these seem the key to the Fifth Republic. It is just the authoritarian air of the new text that has caused the friends of France the greatest disquiet and set off the keenest debate within France itself. In so many ways the de Gaulle Constitution seems to step back from modern democracy into the nineteenth century. There is the weakening of Cabinet responsibility, the sharp cut in the importance of the Assembly. Above all there is the increased prerogative of the President of the Republic. An honest broker under the Fourth Republic, he is now to be a veritable *deus ex machina*. The seemingly sinister Article 16, most disputed of all, could allow him to assume personal power in time of national emergency (of which he would himself be the judge) with little effective safeguard.

Prince-President. Like the first and third Napoleon, the General

has paved the way for the emergence of a new Prince-President, a decline into dictatorship. More sophisticated critics, by contrast, have taken quite the opposite tack. Examining the complicated and imprecise rules of President and Prime Minister, they see eventual disagreement as certain. The Fifth Republic, they say, is doomed to deadlock.

Such forecasts are premature. The face of de Gaulle's France is far from clear. The General has proposed neither a time-bomb nor a cure-all, but a curate's egg. Constructive, futile or vicious by turns, the text of the new Constitution is a workable document that will in itself lead France neither to stability nor disaster. But Constitutions have a curious way of confounding the prophets. The founders of the Third Republic thought it destined to an early death through a speedy return of the monarchy. Republican to the end, it was the longest lived of any regime since the Revolution. The drafters of the Fourth Republic thought they had set the era of unstable Government and futile splinter groups behind. The world knows their miscalculation.

The authors of the Fifth Republic may well have the same sad surprise. Experience may show their text to have been irrelevant rather than disastrous. Unwilling to search out the real cause of France's political ills they have founded a Constitution on an image of France that does not, and never has existed.

For the Gaullists, the problem of Government stability can be solved by watertight texts and mechanical means because France, they believe, is at bottom one nation waiting to be led.

The old-time political parties were for the General "nothing but fractions", speaking for few beyond themselves. In fact, France is a land of many and deeply conflicting political forces. Beyond the demagogy, the haggling and the outdated war cries of the Fourth Republic, its parties stood for something real. The clash between the classic Left and Right (as in Britain), between democrat and totalitarian, believer in Roman Catholic or in secular education, were deep and legitimate differences.

These divisions, which made the old Constitution unworkable, were reflected—not created—through the electoral system by the Assembly. They inevitably existed within them. They speedily succumbed to attack from without or from their own internal dissensions. That was essentially why the Fourth Republic had become ungovernable.

The new phase. New Gaullist groups have mushroomed. The old parties are more divided than ever on the new Constitution and

the way that the General came to power. Cutting across all party lines is the bitterest question of all—Algeria.

The new electoral law may seek to force the parties into coalitions and eliminate some splinter groups. Yet, even if it is only crudely representative, the elections will return an Assembly which—whatever its labels—is as fragmented as ever. Only a profound transformation of the French themselves can bring about the consolidation into a few major parties which the Constitution needs.

The new Constitution seeks to combat Governmental instability with texts. New barriers are raised against fractious dismissals of Cabinets by the Assembly. A Government will be forced to resign only if an absolute majority of the Deputies vote its censure. Well and good. But what is to prevent coalition Governments again staking their lives on "unofficial" or "implied" votes of confidence and so sidestepping the new safeguards? Will the dissolution weapon (only once used since 1877) be as "unrepublican" under the Fifth Republic as under the Third and Fourth?

A determined yet liberal leadership could make the Fifth Republic as strong as its authors hope. But the Constitution extends beyond a form of words to the understandings that surround it and to the men who make its traditions. The new elections will surely bring new Gaullists into the Assembly. Formerly his own R. P. F. Deputies rapidly became "men of the system" and the same can happen again. It is just possible that the Fifth Republic's leaders will be the gravediggers of the Fourth: the Pinays, the Mollets, the Laniels, the Edgar Faures and the obscure back-benchers. Steeped in the Fourth Republic traditions, they may play the parliamentary game as they know it—in the old traditions. If the Fifth Republic could lead to dictatorship, it could also drift so easily back into a near-image of the Fourth. The cry may yet rise again "plus ca change. . ."

Whoever is called upon to lead the first Government of the Fifth Republic must meet the problem that killed the Fourth—Algeria. The Algerian war, after four bitter years, divides and impassions France as Britain was torn over Ireland half a century ago. Just as British democracy was shaken to its core by the threat of armed rebellion in Ulster, so whatever solution for Algeria is sought the resultant controversy will test the new Republic. Whether the Constitution gives France the institutions and the scope for leadership to surmount the challenge and survive is still to be seen.

The Judiciary

Contrast with England. An important difference between the British and French constitutional systems is "the striking contrast which marks the development of law and law-courts in the two countries." And this is due to "the fact that England, at an early date, developed a royal power and a national spirit which mastered feudalism and feudal jurisdiction, gave the country a unified legal system and established the supremacy of the royal courts."[1] In France, on the other hand, there was no system of common law up to the Revolution of 1789. Justice was, however, administered by edicts, decrees, and ordinances issued by the king. The weakness of this system became clear to the leaders of the French Revolution; they abolished the old system of jurisprudence, and enacted general statutes instead. After Napoleon had acquired power, he took up the important task of codifying French law, "went at the project with characteristic energy, and completed it within a few years."[2] *Code Napoleon* proved his most enduring work, which established in France a single system of law and procedure of law courts; subsequent revisions were made to make the code more comprehensive without, however, changing its basic principles.

Principles of French judiciary. Every French court is independent to give its own decision, without being bound by precedents, *i. e.*, at one period a particular court, presided over by a particular judge, may give a decision which may be in strange contrast with a former decision of the same court given by another judge. No such thing can happen in England where precedents are respected. Secondly, the French constitution (being written and rigid) is the supreme law of the land and the French courts have the authority, in theory, like the American Judiciary, to declare the unconstitutionality of any law which, in their opinion, is not in conformity with the constitution, but no French court ever exercises this right. And the reason of this is that French courts are the creation of the French Parliament, therefore the moment a court declares any law unconstitutional the legislature would easily take away from that court this power of adjudging the constitutionality of any law. On the other hand, in America the Supreme court derives its authority from the Constitution and the

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[1] Munro, *Governments of Europe*, pp. 515-16.
[2] *Ibid.* p. 518.

Congress has no power to take away any power of the court. "It is not the habit of Frenchmen to look upon the judiciary as a separate branch of government, distinct from the legislative and executive branches. They incline to regard the courts as mere administrative agencies, something like the post offices or the prefectures."[1] Thirdly, all French courts have a local character, *i. e.*, they sit at fixed places and do not go on circuit. Fourthly, barring the very lowest courts, all French courts have a number of judges on each bench, and every decision must be given with the concurrence of not less than three judges. This results in the appointment of a very large number of judges. Fifthly, there is a dual system of law courts in France. There are the ordinary courts for trying cases in which only private citizens are involved, and then there are different administrative courts for trying offences committed by government officers in their official capacity. This is due to the fact that France has developed Administrative Law (*droit administratif*), and has no Rule of Law.

What Administrative Law means and is. *Droit Administratif*, or Administrative Law, as opposed to the Rule of Law, is made up of a body of rules devised by the French executive for regulating the relations of the state towards its citizens. Administrative Law is a part of the French legal system and deals with the position and liability of the state officers, the rights and duties of the French citizens in regard to their relations with the state officials as representing the state, and the procedure that is followed in enforcing these rights and duties.

History of Administrative Law in France. Administrative Law has existed in France since very old days. Napoleon had adopted it to suit the conditions then prevailing. He introduced two principles, *viz.*, the state officials have certain special privileges, rights and prerogatives as against the private citizens, and the separation of the legislature, executive and judiciary should not interfere with the activities of the state officers, *i. e.*, the executive to be independent of the judiciary. As a result of these principles, four features of the Administrative Law came into force. Firstly, the relations of the state officers towards private citizens were guided by rules entirely different from those governing the relations of private citizens to one another. Secondly, disputes between state officers and private citizens were to be disposed of not by the ordinary courts, but by special courts established for the purpose. Thirdly, the question whether a particular case

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[1] Munro, *Governments of Europe*, d. 521.

was to be governed by the Administrative Law or ordinary law was decided by the head of the state, in practice by the Council of State on his behalf. Fourthly, a state official was protected from the supervision of ordinary courts on the ground that a particular act was done *bona fide* in discharge of his duty as a representative of the state.

After the Napoleonic period, minor changes were introduced in the system of Administrative Law, particularly the composition and powers of the machinery through which it was actually worked, till we find it today as it works in France.

The Rule of Law and Administrative Law compared. It is difficult to say as to which system is better, the Rule of Law or the Administrative Law. The former better protects the rights and independence of the private citizen, but it encourages legalism and reduces respect for the state. The latter gives greater protection to the state officials who administer more securely and fearlessly, but deprives private citizens of opportunity to seek redress against the vagaries of state servants.

Grades of French courts. As for the ordinary French law courts, there are five kinds of them. The lowest courts are those of the judges of peace (*juges de paix*) who preside over them and try civil cases. There is one such court in a canton or group of communes—3,000 such courts in all, in a group of communes or a canton. A Justice of the Peace is nominated by the President of the Republic on the advice of the Minister of Justice; he generally possesses the first law certificate. He receives 2,500 to 5,000 francs per annum as salary. He hears and tries cases involving petty offences. In cases involving at least 300 francs or crimes entailing a penalty of at least 5 francs, appeals may be preferred to the Court of Arrondisement.

1. Courts of Arrondisements. The Court of Arrondisement (*Tribunal d' arrondisement*) is the next higher court. Each arrondisement has one such court, consisting of a president and two more judges. It hears appeals from the lower court and has original jurisdiction in cases involving more than 300 francs. Its decisions in all cases dealing with amounts of not more than 1500 francs, are final. It deals with all criminal cases wherein the penalty is more than a fine of 5 francs. When sitting as a criminal court, it is called the Correctional Court.

2. Courts of Appeal. The next higher courts are the Courts of Appeal, they are 27 in number. They generally hear appeals. Each one of them has three sections, *viz.*, a Civil Chamber, a Criminal Chamber, and an Accusation or Indictment Chamber. The last section is entrusted with

the task of deciding "whether persons charged with misdemeanours shall be brought to trial."

3. Court of Assize. The next higher court is the Court of Assize. It meets periodically in chief provincial towns and is, therefore, not permanent. It is composed of a President appointed by the Minister of Justice and two more judges. It is the Criminal Court of France, wherein trials by jury are held.

4. Supreme Appellate Tribunal. Then finally, there is the Supreme Appellate Tribunal at the apex of the ladder. It is the highest court of appeal; it can suspend or reverse the judgments of all lower courts. The jury system of France has been borrowed from England and, therefore, does not function satisfactorily.

5. Administrative Court. France has her own Administrative Courts for the trial of officials. The principles underlying the institution of these courts are: first, the necessity to give the agents of the government sufficient power to carry out its designs; secondly, to keep uniformity of administration without causing fear to the administrators of being called upon by the ordinary judge to explain their conduct. "Each servant of the state is thus protected against, and saved from penalties enforceable in the ordinary Courts for faults committed in such service."[1] Thus the officials enjoy a position of privilege as against the ordinary citizens. At first sight it might appear that citizens in France have no judicial recourse against the officials and the latter are rather independent to act arbitrarily as they have no fear of being tried before an ordinary court; they are tried according to the judge made law, *i.e.*, the law made by the Administrative Tribuals which are set up by the government. But such is not actually the case. Though it is true that the precepts of Administrative Law are not found in any code and are purely based upon precedents, yet it has mainly developed under the influence not of politicians but of lawyers.

Why Administrative Courts continue. However much the Administrative Tribunals be under the influence of the government, they "are certainly very far indeed from being mere departments of the executive government."[2] Dicey further admits that "*Droit Administratif*" with all its peculiarities and administrative tribunals with all their defects, have been suffered to exist because the system as a whole is felt by Frenchmen to be beneficial. Its severest critics concede that

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[1] *Select Constitutions of the World*, p. 895.

[2] *Law of the Constitution*, pp. 377-78.

it has some great practical merits, and is not unsuited to the spirit of French institutions."[1] If the Administrative law denies to the citizens equality with the official before a court of law, it does not mean that the official has the freedom to do as he may please. "Frenchmen do not look upon it as a barrier to the assertion of their personal rights. On the contrary, they regard it as a palladium of their liberties, protection, against arbitrary governmental action."[2] Even the officials fear lest their arbitrariness may lead to their dismissal. And when it is remembered that even in England, the significance of the rule of Law is recently diminishing (as already described in Chapter 8), the difference between the Rule of Law and Administrative Law is not so real as apparent.

Classes of Administrative Tribunals. French Administrative Tribunals are of two classes. There is a Prefectorial Council in each Department, and over them all is a Council of State for the whole country. The Prefectorial Council hears all cases involving crimes committed by officials in the first instance; and official inquiry is held before the case is heard. The members of the Council are appointed by a Presidential decree. They neither get large remuneration nor do they hold long tenure, hence men of great ability rarely accept the office, but they do possess legal training and at least ten years' experience of government service. Then there is the Council of State which has a higher prestige and greater independence of government control. The Minister of Justice and some other ministers are members of this council, but when cases are heard and decided, these officials are excluded. Other members are practising lawyers of higher rank who hold office for three years. The Council of State exercises original jurisdiction in certain important matters, besides hearing appeals from the Prefectorial Councils. It also advises the Ministry.

Local Government

Local Government is an essential and indispensable organ of the governmental machinery of a country. History does not record any instance in which a nation was administered by one single central authority to the exclusion of any other subordinate branch of administration. The local councils are the best bodies to sound the necessities,

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[1] *Law of the Constitution*, p. 377.

[2] Munro, *Governments of Europe*, p. 543.

difficulties, traditions and feelings of the residents of different localities of a country. Complete tyranny or one man's rule is an impossibility in the modern world at least. And France is no exception to the fact. It must also be noted that generally revolutionaries attack the central machinery and leave the local one to almost the *status quo*.

Before the Revolution. "Prior to the Revolution (of 1789), the French administrative system was centralised, bureaucratic, wasteful and inefficient."[1] There was practically no system of local government and the whole country was divided into different provinces which lost their political independence with the rise of the absolute monarch. The *generalite* was the chief administrative district headed by a bureaucratic government official, namely, an intendant. He was the mouthpiece of the Emperor. There was no harmony in the whole system. These generalites were composed of communes varying in area, population and the form of government. Their representative institutions were also abolished with the rise of monarchy. Offices were sold and sometimes made hereditary, to the inefficiency of administration and menace to the public tranquillity.

Effect of the Revolution. The Revolution almost overhauled the whole system by a stroke of pen or decree. Communes were somewhat rearranged. The provinces and *generalites* were replaced by departments, districts, and cantons in the hierarchical order, which "had no history, no associations, no inner life or bond of common feeling, and presented a smooth blank surface upon which the legislator might impress whatever pattern he thought proper."[2] The offices in these bodies were made elective or representative. But this democratic system did not work smoothly as people were not educated in that fashion. It was too ahead of its age, and resulted in administrative anarchy leading to the revival of the old centralised form. "The decree of 1789 affords a good illustration of a triumphant demos running amuck,"[3] and may be put in the same category as the acts of Mohammad Tughlak of Delhi. In 1795, the local officials were brought under the supervision of a directory at Paris, and, finally, since 1800 they were to be appointed rather than elected. Now once more the whole system is centralised for ever. "Nor has there been any inclination in more modern times to depart from this policy. Governments, whether

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[1] F. A. Ogg, *The Governments of Europe*, p. 462.
[2] *Cambridge Modern History*, Vol VIII. p. 190.
[3] W. B. Munro, *The Governments of Europe*, p. 552.

monarchical, imperial or republican, have been equally anxious to preserve the unity of France and have held that the only way to do this is by keeping the whole administration strictly subordinate to the ruling powers in Paris."[1] Hence the French System is highly centralised in its working.

1. Commune: composition of council. The basic territorial unit of Local Government is the commune. There is a commune for each city, town, parish or rural community, in all 37,983.[2] All communes are placed on an equal footing, with the same form of constitution, powers and duties, Paris and Lyons being the only exceptions. Their population and area vary greatly, the average area being 3,695 acres. Every commune has a council (*Conseil municipal*) consisting of 10 to 36 members elected for four years on universal manhood suffrage. Wards are created for election purposes. Any rate payer above 25 can contest the election provided he is not insane, bankrupt, insolvent, defaulter, criminal and a public official. The municipal council must meet at least 4 times a year, its meeting being open to public. The sessions last for 15 days; the budget sessions may be extended to 6 months. There are restrictions on the taxing and police power of the commune council, and various others on the ordinary municipal functions of the commune. The approval of the prefect is necessary as regards most financial proposals, and that of the council-general of the department in matters pertaining to farms and markets. The prefect is empowered to suspend, and the central government to dissolve, the council.

Working of the council of commune. The commune councillors elect a mayor and assistant mayor or mayors from among themselves, by ballot, for 4 years. They are all unpaid officials and perform obligatory functions. The mayor is assisted by adjoints or assistant mayors. In a town having a population of 25,000 there is one adjoint only and in that of 100,000 two only, the larger communes have one additional adjoint for every 25,000 heads, the maximum limit being fixed at 12, only Lyons having 19. Re-elections are frequent and sometimes mayors have served in that capacity for even 30 years. But this happens more in rural areas which are conservative than in radical urban ones. Party system plays a predominant part in the elections of mayoralty. It is often alleged that the French mayor

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[1] C. H. Harris, *Local Government in Many Lands*, pp. 5-6.

[2] *Statesman's Year Book*, 1949, p. 927.

represents politicians and not voters; yet it must be remembered that "French mayors may be politicians.....but they are not politicians of the ward or precinct type".[1] The mayor is the first citizen of the commune and represents it on ceremonious occasions. His deputies have no duty of their own and do not constitute a collective authority. The mayor acts in a double capacity; primarily as the administrator and executive organ or head of the Commune; secondarily, as a State agent, the immediate subordinate of the prefect of some department. As the executive head, he appoints the majority of municipal officers, publishes laws and decrees, issues ordinances, supervises finance, looks after the safety of the property interests and public health of the commune, organizes and controls the police, and represents the commune in the courts of law. As an agent of the State he is the registrar of births, marriages and deaths; prepares the electoral lists: enforces military service, and "In a word, he watches over the life, health, tranquillity, and even the slumber of those in his administration.....he is, in some sort the incarnation of the idea of solidarity".[2] The mayor ordinarily distributes his duties to his assistants, and "all acts...of the general government are performed under the strictest surveillance of the prefectural authorities.[3] He may be suspended from the office for a month by the prefect, or for 3 months by the Minister of the Interior; and he may be dismissed by a presidential order. He is not "a paternal, extra-judicial authority, unfettered by party considerations.....and is the head of the winning side; he is a party man from whom impartiality is not expected".[4]

2. The Canton. The canton is a group of communes forming an area for judicial and electoral purposes. It forms the jurisdiction of the justice of the peace. The total number of cantons, in 1946, was 3,028.

3. Arrondisement. The arrondisement or district is an administrative sub-division of the department. It has a council of not less than 9 members (at least one from each canton) and elected for 6 years. The council meets regularly before and after August to make representations on the proposals and to assess upon the communes

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[1] W. B. Munro, *Governments of European Cities*, p. 289.
[2] Poincare, *How France is Governed*, p. 49.
[3] F. A. Ogg, *The Governments of Europe*, p. 478.
[4] Joseph Barthelemy, *The Government of France*, p. 149.

their respective shares of the taxes imposed upon the arrondisement. Other meetings decide departmental affairs. It has no property and no budget. The position of the sub-prefect in the arrondisement, who is appointed by the central government is the same as that of the prefect in the department, but he enjoys only such powers as the prefect allows him. In 1946, there were 311 arrondisements.

4. The Department. The Metropolitan France is divided into 90 departments; at the head of each is a prefect, whose term of office is not fixed. He is appointed by the central government and removed nominally by the President of the Republic, but in reality by the minister of the interior. He is the most important local official and acts both as an agent or instructed delegate of the central government and as the executive head of the department. He looks after practically all departmental affairs and renders valuable advice and information to the authorities above. He appoints many of his subordinate officials and issues bye-laws and ordinances. "His discretion has been increased in many directions, and now-a-days there are few, if any, local officials in any country whose authority is so great"[1]. The appointment is largely political; he is expected to act as the political and electoral agent of the government of the day. He is assisted by a secretary general and a prefectural council of 3 appointed by the central government. These prefectural councillors must be trained in administrative system. The prefect is not obliged to follow their advice. The main function of this council is to act as an administrative court of first instance. The council general is the representative body of the department and consists of 17 to 67 members, each canton sending one candidate. Its term is six years, half retiring after every three years. It elects its own chairman and makes rules of procedure. Its sessions are public. Its functions include fixing of departmental taxes, approval of loans, maintenance of roads, other public works, colleges, institutions for poor relief, lunatic asylums, etc., provision for the destitute and orphans. It can pass resolutions on subjects other than political, and gives its opinion on points referred to it by the central government. It can be dissolved by a governmental decree. It must appoint annually a departmental standing committee which must meet at least once a year. This committee exercises the powers delegated to it by the council, except the powers of levying a rate or borrowing money.

City of Paris. Dr. Shaw presents Paris as the "typical modern

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[1] F. A. Ogg, *The Governments of Europe*, p. 473

city." Like many other capital cities of the world, Paris has a peculiar or different form of government from the rest of the cities of France. There is no official like mayor. It is administered more or less as a department of the Seine, which embraces the surrounding area of the city proper. The department has two chief executive heads or two co-ordinate prefects—the prefect of the Seine and the prefect of police. Both are appointed and removed by the President of the republic; and both are directly responsible to the minister of the interior. The jurisdiction of the prefect of police includes some portions of the adjacent department of the Seine-et-Oise. Together they exercise the same powers and perform the same functions as a single prefect of the department. In the city of Paris, of course, they enjoy the same powers as a mayor enjoys in other cities. In a sense the appointment of the prefect of the Seine is political, but it does not mean that the post is transferred with the change of the ministry or government. The relations of this prefect and the minister of the interior are harmonious, no matter if they belong to different parties or groups. He acts according to the instructions of the ministry. He has a very limited range of initiative and discretion. He prepares the municipal budget (except that portion which relates to police) and has general charge of all civic and department property. "There is, in fact, a greater concentration of administrative powers in the hands of the prefect of the Seine than in those of any other local official in France, or indeed, in any other European city."[1] He is not directly responsible to his council. In case of dispute between him and the council he can say, "Now I say that I have been assured in advance of the ministry's support in the hands of the ministry." The prefect of police is a colleague of the prefect of the Seine and like the latter is not responsible to the council. He regulates every thing connected with the personnel, pay, promotion and discipline of the Paris police force, and is the executive head of the system in all its branches.

Composition of Council. Lowell aptly remarks that ". . a dread of the explosive character and communistic tendencies of the democracy of Paris has prevented the capital from enjoying even the measure of liberty granted to other towns."[2] The city has a Municipal council composed of eighty members and endowed with almost all the usual powers. The department of the Seine has a greater council consisting

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[1] W. B. Munro, *Governments of European Cities*, p. 324.

[2] A. L. Lowell, *Governments and Parties in Continental Europe*, p. 42.

of the above 90 members and 8 suburban members. But the real power lies in some other quarter, namely, the central government. The council of the city chooses its president, vice-president, one or more secretaries and a general director of ceremonies. Its term is four years. For the purpose of election each of the twenty arrondisements into which Paris is divided for administrative purposes, is subdivided into sections. There are communists and the parties of the right and left. The council meets four times a year in regular session. Major part of its work is performed by its standing committees or commissions the number of which increases according to demands. At present there are 6 committees. For the selection of these committees the council splits up into 4 parts each recommending 2, 3 or 4 members. There are some mixed commissions also made up of lay citizens or officials. The committees do not control any separate service. They are to investigate, work out and recommend proposals to the council; but their recommendations are not binding upon the decisions of the council. The municipal council does not elect administrative officers and as such does not directly control their policy. No resolution of the council can be put into effect without the express approval of the prefect of the Seine. It is not allowed to discuss questions of national policy; but this it often sets at defiance. Its only important legal function is of voting the budget, and even here its decision is closely circumscribed by law. It has various powers with respect to the acquisition of municipal property, the regulation of licence fees and market tolls, the acceptance of bequests and gifts, etc., but in every instance the concurrence of the prefect is essential. "Paris council is perhaps the least influential among the great municipal legislatures of the world—not even excepting the New York Board of Aldermen."[1] Again Dr. Shaw aptly says that "the French councils are less substantial and responsible bodies than those of the large English and German towns (cities)."[2]

Finances of local bodies in France. Each local authority is entitled to add a certain percentage to each of its direct taxes which it raises for State purposes. The Taxes to which this addition may be made are the land tax, the land building tax, the tax on the rentals of houses and apartments, the door and window taxes and the licence tax on trades and professions. Every local council prepares a budget for the unit and discusses it. In towns with a revenue of at least 3,000,

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[1] W. B. Munro, *Governments of European Cities*, p. 334.

[2] A. Shaw, *Municipal Government in Continental Europe*, pp. 163-180.

francs the budget must have the approval of the President of the Republic, in consultation with the Minister of the Interior. Both the Department and the Commune are free to raise loans for periods up to 30 years, if the loan charges do not exceed the maximum fixed by law. For loans of larger durations they must obtain a decree of the Council of State. Grants-in-aid are given by the central government to the local bodies for a large number of purposes, but they are required to be spent in the specified manner and for the required purposes. The local unit raises money to carry on its administration largely from the taxes levied on various articles, for instance, dogs, entertainments, mineral waters, visitors, animals for sale or slaughter, etc. They receive revenue from fees, licenses, tolls, and returns from communal property.

In the continent all authority is deemed originally to be in the central government, "with local government existing rather for the convenience of the central government than for the benefit of the locality".[1]

Central control. We have seen how much the Ministry of the Interior controls the local affairs of the republic. "In fact the central government still makes itself continually and actively felt in local affairs, and this is for the ministers a great source of power, but also.. a cause of weakness."[2] In France, the Parliament generally frames laws in broad terms reserving the right to modify their application.

By the President and Ministry of the Interior. The Ministry of the Interior, through which the central control is mostly exercised, publishes ordinances and regulations in relation to local affairs. These ordinances and regulations are generally signed by the President of the Republic and countersigned by the Minister and are then transferred through the prefect to the mayor of the commune. In many cases the prefect also issues prefectural decrees. The executive heads of every local unit are appointed and removed by the President with the consent of the Minister of the Interior, who thus controls all the affairs. The cities, towns, etc., have little amount of local autonomy. Certain actions of the Commune Council require the sanction of the President of the Republic, while in other matters the approval of the Ministry of the Interior is sufficient and indispensable. In fact, in all matters the approval of the minister is necessary as the President has

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[1] Herman Finer, *English Local Government*, p. 20.

[2] A. L. Lowell, *Governments and Parties in Continental Europe*, p. 48.

no responsibility. The Ministry of the Interior concerns itself with the supervision of public places, order, health, safety and good government. Most of the supervisory functions of the Ministry are carried out by its agents, the prefects and sub-prefects.

By the Prefect as agent of the Central Government. The prefect of the department controls the affairs of the communes and conveys orders of the central government to the local units. The prefect as the agent of the central government also fixes the data of the meeting of the commune council and may suspend its sessions if he sees that the councillors have gone far beyond their authority. The whole system of education has been centralised; different types of education are placed under the supervision of different authorities. Public poor relief is controlled through a committee appointed by the central government. Police is also under the central government and in some cities, like Paris, it is directly controlled by the Ministry of the Interior, and in this sphere the central control is the greatest. Highways are generally controlled by the central government. In the case of finance, the municipal budget of the commune must have the approval of the prefect of the department before it becomes effective; in the case of a commune the budget of which exceeds nine million francs it must have the approval of the central government. If the budget does not pay adequate heed to the obligatory services like police, highways, etc., the prefect can insert the amount he thinks necessary in the budget and, if necessity arises, can impose more taxes to cover the cost of these services. Even in matters of purely local concern the prefect exercises his veto power. In case the commune council acts by simple resolution the prefect can veto the measure on any ground he pleases; but when the council enacts a bylaw he cannot annul it save on grounds of illegality. All expenses, all contracts, all things of property for public use, require the approval of the prefect. In practice, the council does not generally enact bylaws and hence there is nothing which the municipal council can do without the consent of "His Majesty at the Prefecture." But if the prefect acts tyrannically, the municipal council may report the matter to the Ministry of the Interior which "forms the apex in the pyramid of centralisation."[1] Failing to have justice from it, the council can appeal to the Council of State for final decision. Thus we see that central control is rigid; and the system ensures the local maintenance of order and honesty and protects the

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[1] W. B. Munro, *Governments of European Cities*, p. 27.

minorities from the tyranny of the majorities. But the system has its demerits also and is not popular. "If the hierarchy of officials is competent and incorruptible, the centralised system is perhaps the most efficient and inexpensive of all systems. But it is likely to lead, on the one hand, to bureaucratic tyranny and, on the other hand, to corruption. We cannot trust an official class to govern us well and efficiently any more than we can trust the landowning class or the capitalists class."[1] This defect is to be seen in France also.

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23

THE GOVERNMENT OF ITALY

Lump the whole thing: Say that the Creator made Italy from designs by Michael Angelo.

—MARK TWAIN

ITALY, the peninsular Kingdom of the Mediterranean, covers an area of 119,764 square miles and has a population of 47,518,537 according to the estimate of 1951. The King of Italy enjoyed till his abdication in 1944 the additional title of Emperor of Ethiopia, under Royal Decree of May 9, 1936, and a Law of May 18, 1936. The overseas possessions of Italy, called the Roman Empire, covered an area of 1,406,257 square miles with a population of 9,453,375 in 1939.

With the entry of the Allied armies into Italy in July 1943, the Fascist regime of Mussolini began to crumble and in August 1943, it was disowned by the newly formed governing party of Marshall Badoglio. With the close of Second World War in Europe the fascist system of government disappeared. It was replaced by a republican system under Bonomi's influence, on June 10, 1946.[1]

HISTORY OF THE CONSTITUTION

Italy till the rise of Fascism. Italy rightly feels proud of a very ancient civilisation, and an inheritance rich in culture and traditions. Before the Christian era the Roman Empire had extended in the north up to the southern half of Britain, in the south up to the northern parts of Africa. Its conquering hordes established Roman rule which gave a new turn to the life of its subject peoples. The Romans evolved an entirely novel system of law which forms the foundation of the legal systems of several European countries.

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[1] At the referendum held on June 2, 1946, valid votes cast for republican form were 12,718, 641 (i. e. 54·3%); 10,718,502 (i.e. 45·7%) voted for the retention of Monarchy. The voting was compulsory for both sexes. Thus ended the reign of the House of Savoy.

Mid-nineteenth century. Italy's fight for national independence and self-rule lasted from 1848 to 1870. The year 1848 is famous in European history for the general rise of nationalism and democratic ideals. It was in that year that the city of Milan threw off the foreign yoke. Milan's example was soon followed and on March 22, Carlo Alberto, King of Piedmont, formally declared war on Austria. The ousting of foreign rule did not, by itself, make an Italian nation. "The Italian people as a whole, divided for centuries, into semi-feudal principalities, oppressed by foreign rulers and absorbed in matters of local concern, had no sense of national unity, no knowledge of freedom and no experience with parliamentary institutions."[1] The remark of the great Italian statesman, D' Azeglio, *viz.*, "We have made Italy, now we must make Italians," depicted the real state of Italy in 1861. The country was poor; it was hopelessly divided; the north was industrial and the south agrarian; it had no colonies to profit by. And yet the glory of the past was encouraging the illiterate Italians to revivify their national life and secure for their country a position of prestige and honour among free nations.

The Statuto of 1848: a parliamentary government. A choice had to be made in 1861, and accepting the cult of liberalism and democracy, which was finding favour with all other European nations, the Italians introduced parliamentary government. The *Statuto* which Charles Albert had granted to Piedmont in 1848, was made the basis of the new constitution of Italy. Thus was introduced a limited monarchy with legislative power vested in the King and a bicameral legislature, consisting of the Chamber of Deputies elected on a narrow franchise, and a Senate composed of life nominees appointed by the king from twenty-one classes of people. "Parliamentary government, imposed from above at a time when a large minority of the population were illiterate, never became thoroughly acclimated in Italy's political life."[2] This was due not so much to any lack of political leadership, as to "the absence of any solid basis, economic or the parliamentary system."[3] From 1861 to 1914, Italy worked the new system of government under the leadership of her Liberals, the political pendulum swinging only between the left and the right wings of their party. And though the Socialists had organized a party in the last decade of the

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[1] Buell, *New Governments in Europe*, pp. 36-37.
[2] *Ibid.* p. 37.
[3] Cole, *Modern Politics*, p. 163.

nineteenth century, they could not gather sufficient momentum to become a factor of any reckoning. In 1910, a Nationalist party was formed to follow 'a policy of expansion and imperialism.' In the next two years, Italy entered a war against Turkey, and on its conclusion obtained possession of Tripoli and Cyrenaica, just to begin her colonial empire.

Failure of parliamentarianism after the war of 1914-18. When the world war broke out in 1914, Italy refused to observe her terms of the Triple Alliance with Austria and Germany and declared her neutrality. A majority of the Socialists, and the Church opposed Italy's entry into the war, but a band of Socialists composed of youths, led by Mussolini, preached the gospel of war and insisted on Italy's siding with great Britain and France, hoping thereby that Italy would become a great power. As for the Triple Alliance, Mussolini dismissed it, saying, "It had been a marriage without trust, brought about more in order to counter-balance military power than by political necessity."[1] So far Italy had failed to get a recognition of equality with great Powers, and to find a colonial empire as great as that of Britain or France, and though she had wrested Tripoli from the already collapsing Turkish Empire, it was more of a liability than an asset. In short, Italy was seriously suffering from *inferiority complex* in the midst of European powers of the first rank. "Such was the mood in which Italy entered the European war, largely as a result of balancing the offers made to her by either side, and hoping to find that in the end, if the wild promises of the Allies were fulfilled, she would at least be a really great Power. But the experiences of the war were disappointing."[2] She had contributed to the success of the Allies in the war ungrudgingly and with all the zeal of a nation trying to prove her mettle. Her sacrifice had made her almost a starving nation but victory continued to warm the heart and soul of her youth. However, when it came to settling the terms of the Treaty of Versailles, and dividing the spoils of war, her Allies deserted her. She had entered the war with hopes of augmenting her empire and her status. And though victorious in the battle-field, she was utterly defeated in the diplomatic battle. After four years of fighting "she awakened to the realities of the political game at Versailles and learnt the real lesson of the war."[3] Mussolini,

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[1] Sharma, *Mussolini*, pp. 20-29.
[2] Cole, *Modern Politics*, pp. 164-65.
[3] Sharma, *Mussolini*, p. 39.

who had been the greatest supporter of Italy's entry into the war, was now the most dissatisfied man in Italy. He attributed this failure to the incapacity and weakness of Italian statesmen at the helm of affairs.

Beginning of Fascist rule in Italy. Consequently, he organized a vigorous opposition to the government and founded the Fascist Party to wrest power from the Liberals and push forward a vigorous programme for the regeneration and rehabilitation of Italy. How he wrested power from the parliamentarians and became the dictator of Italy does not need mention here.[1] He introduced into Italy a new system of government, and transformed her into the new Italian Corporative State, founded on the cult of Fascism.

The Theory of Fascism

To understand the real significance of the Corporative State of Italy, it is necessary to know what Fascism implies.

As a Reaction to Democracy. It is often asserted that the Great War was fought to make the world safe for democracy. Nothing, however, is farther from the truth than the above assertion, if we concede that results are the indications of the object. It is true that with the signing of the Treaty of Versailles, the League of Nations came into existence to preach internationalism or *international democracy*. But a vigorous reaction to democracy soon captured the imagination of the youth in several European countries. In Russia, it took the shape of a violent revolution; in Italy, it started its career as an *evolutionary revolution*, founded on the old regime but removing from it the causes of its inherent weakness. Fascism, thus, began as a product of failure in war. It adopted as its symbol a bundle of rods and an axe. This symbolism has a double meaning; the axe represents the State authority and the bundle of rods represents the idea that in unity lies strength. Hence the whole symbol indicates authority and co-operation.

Place of character. Fascism placed before the Italian Youth a definite standard of character. Right and wrong were related, essentially, to questions of character upon the proper formation of which depended the salvation of a nation. It aimed at solving social and

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[1] For a detailed and interesting account of the rise of Mussolini, readers may consult Sharma's *Mussolini*.

economic problems by renouncing, in the first place, materialism in all its forms; secondly, by developing "aesthetic sensibility"; thirdly, by substituting religious and truly Roman sense of social solidarity in place of the extreme Greek individualistic spirit; and lastly, by 'ruralising civilisation.' Fascism claimed that all this "would make possible a social unification of the Western world, the emergence of a new and vital synthetic civilisation compounded of the two great formative traditions of Europe, the Greek and the Roman, spreading the fire of its faith by the force of example and enthusiasm, and by blending to its purpose all the powers of authority which it can succeed in infusing with spirit."[1]

Mystic and idealistic aspect. Fascism is fundamentally "mystical as well as idealistic." It includes Hegel's conception of the Nation-State *minus*, of course, his dynamic treatment of human society. It inherits from the French Revolutionaries its *Totalitarianism*. Fascism demands of the individual unquestioned and active loyalty to the Nation-State which is the highest form of its political edifice; for to the Fascist there is "Nothing without the State; nothing against the State; nothing beyond the State." The citizen's activities must all be directed towards the exaltation of the State and if he feels no such loyalty, he has no claim to be a good citizen. Consequently, Fascism involves the ancient Greek concept of citizenship. Viewed in this sense, the Fascist State was a spiritual and moral fact in itself. It did not rest solely on the present, but was also linked with the past and transmits itself to the future. "It is the State which educates its citizen in civic virtue, gives them a consciousness of their mission and welds them into unity, harmonizing their various interests through justice, and transmitting to future generations the mental conquests of science, of art, of law and the solidarity of humanity. It leads men from primitive tribal life to that highest expression of human power which is Empire; it links up through the centuries names of those of its members who have died for its existence and in obedience to its laws; it holds up the memory of its leaders who have increased territory and the geniuses who have illumined it with glory as an example to be followed by future generations." These words of Mussolini, sentimental and emotional, had made a successful appeal to the Italian youth which was then at his beck and call. Such a conception of the State naturally limits individual freedom to make the State

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[1] Laski, *Fascism*, pp. 77-8.

omnipotent. And yet, "the individual in the Fascist State is not annulled but rather multiplied, just in the same way as a soldier in a regiment is not diminished but rather increased by the number of his comrades." The Fascist State was not indifferent to religion; it did not create its own God; it respected the God of the simple folk.

Intense nationalism as against liberal democracy. The Fascist programme was in consequence, intensely national. It ruled out the necessity of a political opposition and, therefore, disapproved of the nineteenth century Liberalism and Democracy. It rested on the supremacy of the Nation and, consequently, opposed Socialism. The Fascists did not claim they had a definitely prescribed programme. They believed in action, in sentiment, and in what was actually taking place. "Political and economic factors, according to Fascism, are neither predetermined nor eternal, but mobile and subject to change in different historical environments." This largely accounts for the frequent changes in the Fascist State. All activities of the citizen were, primarily, required to be directed towards the well-being of the State for the will of the individual must not differ from the will of the State. In the words of Mussolini, "Discipline must be accepted. When it is not accepted, it must be imposed." There is no such thing as popular sovereignty. "Sovereignty resides not in the people, but in society juridically organised as a state." This means the leadership of one man "who can crystallise its ideals." Mussolini supplied that leadership in Italy.

The Legislature

Old form but new spirit. When we begin to understand the frame of the Fascist Italian Government, we must remember that Mussolini had tried to keep, at least in all outward appearances, all the older parts of the machinery which were established under the Piedmontese *Statuto* of 1848. But what he had really done was to change the whole spirit of the constitution so as to take away all its democratic (as conceived in liberal sense) features replacing them by a quicker method. This was true of all branches of the administration.

Bicameralism continued. The legislature consisted of, as it did before the Fascist rule, two chambers, the Senate and the Chamber of Deputies. Mussolini had entered the Italian Parliament as the leader of a very compact and strong minority party. Consequently, he retained in his first (coalition) cabinet leaders of several other

groups. But he soon found that he had to depend upon uncertain votes of the non-Fascists in the Chamber of Deputies to have his measures accepted. Therefore, he dissolved the Chamber and appealed to the country. New elections were held on 24th April, 1924, under a new system of elections which he had introduced. According to this system, the country was divided into fifteen large constituencies. Each party contesting the elections produced its list of candidates in each constituency. The voters were asked to vote for party lists, *e. g.*, a voter had to vote either for the Fascist list or for the Social Democrats' list, or the People's Party list, and so forth. He had no choice to select his candidates from the lists. The votes secured by each party in all fifteen constituencies were then added up. The party which secured the largest number (at least 40 per cent) of the votes polled was automatically assigned two-thirds of the total seats (in the Chamber to be filled up, *viz.*, 356 seats out of the 535, and the remaining 179 seats were distributed among other parties in proportion to the votes secured by them). In that particular election the Fascists obtained 356 seats for 4½ million votes polled, against 179 seats of the opposition parties for 3 million votes.

On May 17, 1928, a new Electoral Law[1] came into effect. The whole country was considered as one electoral unit. The Fascist syndicates were asked to nominate eight hundred names for filling up 400 seats in the Chamber (its total reduced strength). The other legally constituted bodies and associations, the object of which was "cultural, educational, charitable or propagandist," and which existed because they had a national importance, were asked to nominate two hundred candidates.

The eight hundred candidates nominated by Fascist syndicates were assigned to them thus: Agricultural 192 (Employers 96, Employees 96); Industries 160 (Employers 80, Employees 80); Commerce 96 (Employers 48, Employees 48); Ship and Air Transport 80 (Employers 40, Employees 40); Land Transport and Inland Navigation 64 (Employers 32, Employees 32); Banks 48 (Employers 24, Employees 24); and Professional Men and Artists 160. The whole list of 1,000 candidates was then examined by the Grand Fascist Council; only 400 names were retained (the Council was authorised to reject any names

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[1] According to this law franchise was granted to men of 21 years of age, and also to men of 18 years, if married or widowers with sons, who were paying syndicate rate or taxes to the amount of 130 lire, or receiving a salary or pension from any public institution.

and substitute new ones of its own choice). This final list of 400 candidates was submitted to the voters who were merely asked to say *yes* or *no* to it, without choosing any candidates on it.

In case of an unfavourable verdict, the various associations were to prepare their own lists to be submitted to the voters. All candidates on the new list securing the largest votes were to be declared elected, and the seats reserved for minorities were then to be distributed among the other lists in proportion to the votes polled by each.

According to the above electoral plan, the first plebiscite was held on 24th March, 1929. The list consisted of 400 Fascist candidates (who were of at least 25 years of age). Out of the total of 9,673,049 registered voters, as many as 8,663,412 went to the polls, and of these 8,519,559 voted for the list and only 135,761 against it. In this way, the first all Fascist Chamber came into being on 24th March, 1929. As Mussolini had declared on 11th December, 1933, the Chamber did not please him. Consequently, another Chamber was elected on 25th March, 1934, on corporative basis, all the 400 candidates on the Fascist list having been elected. At that election 95.5 per cent of the registered voters went to the polls. And of these 99.84 per cent voted in favour of the national list of candidates.

This meant the establishment of a cent per cent Fascist Chamber.

A New Chamber established. It was on December 14, 1938, Mussolini issued a decree abolishing the Chamber of Deputies, which had been in existence for ninety years, and replaced it by a Chamber of Fasci and Corporations, which met for the first time on 25th March, 1939.

Its membership. The new Chamber consisted of 650 members of whom 150 were the members of the National Council of the Fascist Party, and the remaining 500 were representatives of the National Council of Corporations. Besides, the Head of the Government and the members of the Fascist Grand Council (excepting the Senators and members of the Royal Academy) were *ex-officio* members of the Chamber. The members were to be at least 25 years of age; they enjoyed the same privileges as the former deputies, and were called *National Councillors*.

Working of the new chamber. The Chamber met every year. It performed its duty in three ways, through the full assembly, through the Budget general commission, and through the legislative commissions. All measures, previously approved by the Fascist Grand Council were debated in the Chamber, as also in the Senate, and were

submitted by the *Duce* to the King-Emperor for sanction and promulgation.

The Senate. The Senate, too, received its share of new modelling at the hands of the Fascists. Under the *Statuto* of 1848, it was composed of princes of the royal house and an indefinite number of members nominated by the King from 21 specified categories, *viz.*, Archbishops and Bishops; President of the Chamber of Deputies; Deputies who had served for six years or in three legislatures; Ministers of State; Ministers' Secretaries of State; Ambassadors; Envoys extraordinary of at least three years service; first presidents and presidents of the court of Cassation and the Courts of appeal; the Attorney General, Procurator-General; Presidents of chamber of Courts of Appeals, of three years service; Counsellors of the Court of Cassation and Court of Accounts; Advocates and officials of five years' standing; Generals of the army and the navy; Counsellors of State of five years' service; Members of Provincial Councils; Prefects; Members of the Royal Academy; Members of the Supreme Council of Public Instruction; those who had, in any other capacity, honoured the nation; and persons who had for three years paid 3,000 lire in direct taxes. This clearly indicates that the Senate both for the qualifications of its members and their age, was an extremely cautious body of conservatives—yet enlightened, responsible and cultured—persons representing the best riches, talents and aristocracy of the nation. Naturally, it opposed some of the Fascist measures, denounced the abolition of parliamentary system, condemned the Matteotti affair, and even disapproved of the Electoral Law of 1928. The chief opposition came from a band of forty liberal Senators. In the design of Mussolini, opposition had no place. Therefore, he filled it with a large number of members, nominated by the king from the 21 categories above mentioned, but all of them of the Fascist Party. This enabled him to make the Senate, too, a docile body, ready to ditto the measures introduced by the head of the government.

The Italian Senate was modelled, from its very inception, on the lines of the British House of Lords. Even during its last seventeen years it had undergone very few changes, though it had gained much in prestige, because the real authority and influence of the Chamber had been diminished. Before the advent of the Fascists, if the Chamber rejected a Bill, the Senate had no opportunity to consider it, nor could a minister resign on an adverse vote of the Senate. It was then provided that the head of the government might refer a measure, even

if it had been rejected by the Chamber, to the Senate and on the latter's favourable vote he might "transmit it to the Chamber for reconsideration without debate and for decision by secret ballot."

Presiding officer of the Senate. The President of the Senate was appointed by the king; the Senate decided by a secret ballot as to who should be recommended for appointment by the King. But for all practical purposes the head of the government (Mussolini) controlled the appointment. Each Senator was given 100 lire for each day of attendance, the maximum payable per annum being 10,000 lire.

Senate at work. The Senate consisted of 408 members (including 8 Royal Princes). It appointed seven standing committees for preconsideration of measures referred to it. Of these, the Committee on foreign affairs had enjoyed great prestige on account of the nature of measures it considered: it discussed all treaties Italy entered into. The discussions in the Senate were valuable, but they were more or less "academic," and "irresponsible". Hence, the Senate did not fit into the whole scheme as a thoroughly useful organ of national power."[1] The Mussolini government commanded a majority in the Senate, and had cent per cent membership in the Chamber. Therefore, the importance of the Italian Parliament had gone; any measure introduced by the head of the government was sure to pass, there being almost no opposition to it. It will not be incorrect to say that the skeleton of the Parliament was continued because the Fascists paid lip-loyalty to the *Statuto* of 1848, but in essence the whole power of law-making had really shifted to the head of the government.

The Executive

Position of the King. The King of Italy still continued to be the nominal ruler. Succession to the Italian Throne was governed by Salic Law, according to which it passed to and through males; but it was now monarchy not by divine right or inherited right, but by the cordial acceptance of the Italian people, manifested in the plebiscites (1860-1870) of the several regions. It was firmly based on the Italian people's regard for the Savoy Dynasty's public services and the people's free loyalty to the king as the symbol of national unity,[2] above parties

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[1] Spencer, *Government and Politics of Italy*, p. 157.

[2] For a detailed account of this event, see Sharma's *Mussolini*, Chapters VI and VII.

and factions and region. The count of Savoy, and later on its duke, was accepted as King in 1861, on his granting to the Italians the extension of the Piedmontese *Statuto* of 1848 to the whole country. And his grandson, King Victor Emmanuel III, was the King of Italy till his abdication in 1944.

On December 24, 1925, a law was passed which introduced a very significant change in the executive branch of the government. Till the advent of the Fascists, kingship was of the limited type. The real power lay with a cabinet responsible to the parliament, though in theory the King continued to exercise the nominal power of appointing the prime minister and dissolving the Chamber. But the new law of 1925, though still retaining the King as the nominal ruler of the country and the Commander-in-Chief of all the armed forces, transferred all effective power to "the head of the government" (the Prime Minister who, till 1925, was a conventional chief of the cabinet), by legalising the latter's *position and functions*. This law stated that the executive power was to be exercised by the King with the aid of his government. And *government*, here, meant the head of the government (the dictator Mussolini), who was nominated and removed by the King alone, to whom he was responsible.

Head of the government. The "head of the government" was, therefore, the real head of the executive. He appointed his colleagues, members of the cabinet, who had a right to attend either Chamber but voted only in the Chamber of which they were members. He directed the whole policy of the government and co-ordinated its work; he was responsible to the King alone, for the administration of the country; he could remove any cabinet minister from his office.

His powers. He controlled all legislation too; no question or measure could be included in the agenda of either house of the legislature without his clear consent; he could demand that a bill rejected by the legislature be reconsidered by it, after a lapse of three months, when there was no debate but voting by secret ballot; he might demand that a measure rejected by any chamber be further considered by it. He was, in fact, the head of all political, economic and moral forces of the country. There was only one political thought and one policy of the state in Italy, and that was the thought and policy of the head of the government. He could create any ministry and likewise abolish it; his life had been made secure, any attempt on it being punishable with death penalty.

Promulgation of laws by the head of government. The law

of 1926 had extended, very largely the power of the executive. The head of the government, with the consent of the King (and under the existing circumstances the King's power was nominal), could promulgate any decree, having the force of law, affecting "the executive power, and the organisation of the state administration."[1] Whenever urgent action was necessary, any other decrees with full force of laws could be issued; they had, however, to be published immediately and referred to the parliament within two years, conferment of such vast powers upon the executive had been subjected to severe criticism. Though the Fascist government maintained that the law of 1926 "regulates and limits a power which would otherwise be subject to abuse", the critics attacked it on the ground that the government had frequently promulgated legislation by decrees without giving it publicity, that it had failed to consult Parliament within the prescribed period of time and that the law of 1926 legalised a dangerous encroachment of the executive power on the legislature.[2] There was, undoubtedly, much truth in the criticism.

Power to dismiss officers. The executive had acquired further powers under other laws. A law of December 24, 1925, empowered the government to dismiss any civil or military officer who had failed to be loyal to his officer or had acted in a way hostile to the government. Another law of the same date authorised the government to amend the penal code and the civil code, and to reorganise the whole structure of the judiciary. The government had, since then, introduced several changes in the law codes.

Thus the executive in Italy had been considerably strengthened. It exercised almost unlimited powers, the head of the government was responsible to the King alone; there was no such thing as joint responsibility of cabinet; there was no hostile legislature and therefore no fear of break in the policy of the government.[3]

The Cabinet. The cabinet as reorganised on June 9, 1936, consisted of, besides the Prime Minister (Chief of the Government and Minister of the Interior, of War, of the Navy, and of the Air), ten more ministers who were respectively in charge of Foreign Affairs, Colonies, Corporations, National Education, Agriculture and Forests, Finance, Justice, Communications, Press and Propaganda, and Public

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[1] Buell, *New Governments in Europe*, p. 65.

[2] *Ibid.*

[3] Goad, *The Making of the Corporate State*, pp. 107-110.

Works.

The Fascist Party and the Government

Rise of one party government. No account of the government of Italy is complete without a full understanding of the place of the Fascist party in the administration. Prior to the Fascist rule, Italy, like all other parliamentary countries, had several political parties in the country and in the legislature. The first act of the Fascists, after assumption of office, was the gradual driving out of all other political parties from participation in the Government. They assigned two reasons in support of this act, *viz.*, the parties had a vacillating programme ill-suited to the needs of Italy, and, secondly, the country required one fixed political as well as economic thought to guide its progress. In 1921, therefore, none but the Fascists were allowed to seek election to the Chamber of Deputies. This step gave the party complete control of the machinery of administration. All other political parties had, consequently, become extinct.

Programme of Fascist party. Though started for the first time in November, 1919, the Fascist Party adopted a definite national programme two years later (1921). It was, at that time, a 'voluntary militia placed at the service of the nation.' Its membership was then estimated at 151,644, and included men from almost all professions. The party professed to be a band of selfless national workers, yet in its ranks were many persons who had joined it with selfish ends. These were slowly driven out of the party. The aim and methods of the party may be found in the following stray sentences from Mussolini's speeches:

"(1) We want to make Rome the city of our ideals, a city cleaned and purified of all those elements which corrupt and defile her.

"(2) Discipline must show itself under the form of a command or of an act of force.

"(3) Violence is not immoral, on the contrary, it is moral....On the other hand, violence is decisive.

"(4) Our programme is simple; we wish to govern Italy....It is not programmes that are wanting for the salvation of Italy, but men and will power.

"(5) I think that the regime can be largely modified without intefering with the monarchy."

And further:

"I do not think that the monarchy has really any object in opposing

what must now be called the *Fascista* revolution. It is not in its interest, because by doing so it would immediately make itself an object of attack, in which case we would not spare it, because it would be an object of life or death for us.

"(6) We want Italy to become *Fascista*, because we are tired of seeing her governed by men whose principles are continually wavering between indifference and cowardice. And, above all, we are tired of seeing her looked upon abroad as a negligible quantity.

"(7) As a matter of fact, at turning points of history force always decides when it is a question of opposing interests and ideas. This is why we have gathered, firmly organised, and strongly disciplined our legions, because thus if the question must be settled by a recourse to force, we shall win."

Conditions of admission to the party. Such a programme and aim necessitated, undoubtedly, co-operation and discipline for success. Therefore, admission to the Fascist party was not open to everybody without question and without distinction. Only those who had given definite proof of their loyalty to the Fascist regime and policy were allowed to become members. The youth of Italy had largely responded to the Fascist call, and students had smilingly gathered round Mussolini's banner. Each member of the party was made to take the oath of firm loyalty to the leader (*Il Duce* as he was called) in these words: "I swear to follow without discussion the orders of *Il Duce*, and to serve the cause of the Fascist revolution with all my strength and, if necessary, with my blood." To enforce rigid discipline, there was a disciplinary court, presided over by the Secretary-General of the party, which examined all cases of failure of the members to be true to the party. Those found guilty of disloyalty were "warned, admonished, suspended and, in the gravest cases, expelled from the party."

An important feature of the party was the close relation between those who had constituted the ruling element and the masses. It did not, therefore, believe in the creation of a "closed professional class" of the rulers. It really served as a training school for those to be put in charge of administration of the school. The total membership of the party (as in October, 1933) was 5,467,560, inclusive of all classes of members from the rulers down to children and youths. The membership was continually increasing, the object being to fuse, ultimately, the party with the nation. The party had three classes of organisations. The elementary groups were the local organisations, each called

fascio di combatlimento. Several *fasci* (local groups) were then federated into provincial organisations and the latter then formed the National Directorate and the Grand Council.

The Grand Council. The Grand Council was the central organisation established under the law of December 9, 1928. It was presided over by the 'head of the government', *viz.*, Mussolini. It had a Secretary-General, appointed by the King on the recommendation of the head of the government. The Secretary-General conducted the work of the Grand Council under the directions of the president, and he might, whenever he liked, attend the meeting of the ministers.

Membership of the Council. It was the business of the Grand Council to co-ordinate the activities of the government. It was convoked by the head of the government who also regulated its procedure. There were three categories of members of the Council, *viz.*, life-long members, *i.e.*, the *quadriumvirate* who closely followed the party from the beginning and guided the March on Rome; the second class included *ipso facto* members, the presidents of the Senate and the Chamber, all important ministers, secretary and joint secretaries of the party, the presidents of the Italian Academy and the National Confederations; the third category included the nominees of the head of the government who was authorised to appoint those who had deserved well of the nation, and the cause of the Fascist revolution, for a period of three years. The members, as such, received no salary. They could not be arrested without the permission of the Council. The meetings of the Council were held in secret.

Business of the Council. The chief business of the Council included the laying down, rather adoption, of the party programme, general direction of the administration, appointment and removal of officials, and the selection of members for election to the Chamber. As an advisory body, it exercised considerable influence on all constitutional questions on which its advice had to be sought. These included all bills 'concerning the following subjects: succession to the throne; the attributes and prerogatives of the Crown; the composition and functions of the Grand Council, the Senate and the Chamber of Deputies; the attributes and prerogatives of the head of the government; the right of the executive to issue decrees having the force of law; the organisation of syndicates and corporations; relations with the Holy See, and international agreements involving territorial changes. In addition the Grand Council acted in an advisory capacity on all political, economic and social questions which the head of the

government might submit to it.'[1] It was, to a great extent, the final source of power, both executive and legislative, in the State, responsible only to the head of the government.

Its position and powers since December 1938. Though, in the beginning, the Grand Council was merely the highest organ of the Fascist Party organisation, a law of December 9, 1928, merged it with the State of which it, therefore, became a constitutional organ. The old dualism had given place to Fascist totalitarianism, the State having, in fact, been captured by the party. In the words of Mussolini himself, "The Nationalist Fascist party has in this manner been incorporated in the State and has become one of its fundamental institutions. . . . Thus is completed the evolution by which the National Fascist party, from a simple private association like the parties of the old regime, has been transformed into a great institution of public law, the fundamental instrument of the regime. . . . Fascism henceforth identifies itself with the Nation and with the State. To say Grand Council of Fascism is equivalent to saying Grand Council of the Nation and the State."[2] And the leader of the party now also meant the head of the government, his left and right hands being the Grand Council and the ministry. On him was really pivoted the whole life, political and economic, of Italy. This position of the Grand Council had been the subject of severe criticism on the ground that "it constitutionalised and perpetuated the rule of a single political party, while materially curtailing the functions of both king and parliament.'[3] On the other hand, its supporters claimed for it a *juxtaposition* essential for the State, with the parliament, because they believed that the Council assured "both unity and continuity in administration," and this was a condition very necessary for the development of intensive nationalism in Italy.

The Judiciary

French example. For her legal and judicial system, Italy owes a great deal to France. In the Piedmontese Statuto six articles were devoted to the judiciary. It was stated that justice emanates from the King and is administered in his name through judges who are appoint-

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[1] Buell, *New Governments in Europe*, p. 69.
[2] Corriere della Sera, November 9, 1928.
[3] *New Governments in Europe*, p. 70.

ed by the Crown. Individual liberty was sought to be protected by the inclusion of provisions like the one forbidding the creation of extraordinary habitual requiring that no one may be drawn from his tribunal jurisdiction.

Not judge-made Law. For the most part Italian law is not formed by the judge, but made by the legislature.[1] Immediately after the foundation of the Italian kingdom the *Italian* Parliament, true to the then wide-spread Napoleonic traditions, gave the kingdom a series of national codes. These embody the civil law, the criminal law, civil and criminal procedure, commercial law, and so on. The Code of Criminal Procedure which was revised in the early years of the twentieth century going into effect in 1912, has been said to "represent in many respects the most advanced view in continental criminal procedure."[2] The Fascist government framed and adopted (1931) under Rocco, the Minister of Justice, a new criminal code. The death penalty of whose abolition Italy had been so proud since her eighteenth century criminologist, Beccaria, was revived.

Organisation of courts. The system of courts was simple and symmetrical. At the bottom of the hierarchy were the praetors. These officers, corresponding to the English justices of the peace, had very little jurisdiction. They had more or less to be arbitrators preventing cases rather than trying them as judges. The Fascist government, as an economy measure, at first abolished a large number of them but since 1925 many were restablished to reward local Fascist leaders.

Tribunal of First Instance. The lower courts of Italy were organised on a district basis. The country as a whole was divided into 982 primary judicial areas (*mandamenti*) and in each there was a court. Above them there were 138 Tribunals of First Instance, which heard appeals from them and had original jurisdiction in more important cases. For serious criminal cases there were courts of assizes which formerly used to sit with a jury. The jury was first introduced in 1848, modelled on the French plan. By the revised code of 1874 the qualifications for jurors were raised above mere mediocrity. The Fascist Code, however, abolished the jury.

Courts of appeal. Above these Tribunals of First Instance were eighteen courts of appeal with headquarters in various court districts of the kingdom like Rome, Milan, Naples, Venice, etc. These courts

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[1] H. R. Spencer, *Government and Politics of Italy*.
[2] W. E. Mikell, (*Editor*) *Esmein, Continental Criminal Law*.

had branches or sessions in the less important cities. Each court of appeal had a special section which served as a labour court and decided cases arising under the provisions of the "labour charter" and other laws affecting the rights of employers and workers.

Courts of Cassation. At the apex of the system, there was a court of Cassation at Rome with final jurisdiction in all civil and criminal cases. Prior to 1923, there were five courts of Cassation at Turin, Florence, Naples, Palermo and Rome with no supreme court for the whole kingdom. This was a serious defect in the judicial system and gave rise to innumerable difficulties in the interpretation of the law. One interpretation of a rule would hold good in the north, another in the south. The Roman court from time to time received legislative grants of special jurisdiction for determining conflicts between different courts, between the courts and the administration, and for correcting error in criminal cases generally. But that did not solve the difficulty. It must be recognised as a distinct achievement of the Fascist government that their regime accomplished the long needed abolition of four of these courts and the integration of their work in the Roman Court of Cassation, which had become a supreme court.

Minister of Grace. The head of the judicial system was the Minister of Grace and Justice, a politician in the cabinet. The judges in all the regular courts were appointed by royal decrees,on the recommendation of the minister of justice ; but they had to be persons who possessed certain qualifications in the way of legal training and experience as laid down by the law.

Security of judges. Judges of the higher Italian courts were ordinarily appointed by promotion from the lower ones. The judges were, however, chosen from men who had prepared themselves for a career on the bench and not from among practising lawyers. By the terms of the Statuto judges were irremovable after three years of service. This did not, however, exclude the removal of judges in case of crime or neglect of duty. No judge might be removed from office except after a hearing before the Superior Magisterial Council, a body made up of high judicial officers with the president of the court of Cassation as chairman. This Superior Magisterial council also prepared and kept up to date a schedule showing the qualifications and experience of all the judges and public prosecutors. This schedule was followed by the minister of justice in making promotions. Like other fields of administration, centralisation had not left the judiciary unaffected. In the new law of 1925, giving to the minister the power

to purge the bureaucracy of persons found to be "in a position of incompatibility with the general conduct of the government," the Chamber definitely rejected a motion to make an exception for the judiciary. This also said Mussolini (June 20, 1925), must be "combed out in the interest of Fascism." [1]

Senate as a court. On the French model, the fascist constitution provided a special court for persons presumed to be beyond the reach of ordinary justice. Article 36 of the constitution declared "The Senate may be constituted a high court of justice by decree of the King to try crimes of high treason and attempts upon the safety of the State and to try ministers impeached by the Chamber of Deputies." As far as ministers were concerned the quasi-judicial process of impeachment had been completely supplanted by the British method of control over the ministry through the Chamber's vote of confidence.

Local Government

Extreme centralisation. Extreme centralisation, the key-note of the Fascist State, was visible in all local government institutions as much as in the central authority. It is true that all the outward forms of these institutions, as they existed in Italy in the pre-Fascist days, had been retained, but their methods of working were radically changed in order to fit them as harmonious parts of the new governmental machinery.

For purposes of local government Italy was divided into 94 provinces, their average size being 1,252 square miles with an average population of 452,420 souls.

The Provinces since the rise of Fascism. On coming into power, the Fascists retained the outward structure of the provincial administration, but changed, almost completely, the spirit of its working. The provincial council then ceased to exist. The prefect was still retained; he was appointed by the Minister of the Interior through a royal decree. The prefect was the central government's agent in the province to keep all provincial organs within the law. He published the law, conducted the police, watched over the theatre, the film, and the newspaper—maintained order.[2] He was assisted by a provincial council of economy consisting of persons appointed by the Minister

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[1] James Murphy in the *New Statesman*, Oct. 31, 1925.

[2] Spencer, *Government and Politics of Italy*, p. 205.

of National Economy from among the lists of nominations made by the various syndical organisations in the province. "Though this council was appointive, it was the one remaining sign of popular participation in the government of the province, as was the essentially appointive Chamber of Deputies in the nation's government."

The Communes. Next to, and below, the provinces were the communes which were the smallest units of local government in Italy. There were 7,339 communes; there were more before, but some of the smaller ones had been amalgamated. The communes were the most vital units of local government. They were rural as well as urban communes. There was a *podesta appointed* by the central government, to exercise all powers within the commune assisted by a council partly elected by the syndicates and other organisations within the commune and partly appointed by the prefect. The *podesta* was appointed for a five-year term, but was eligible for reappointment. He did not get any fixed salary, but received enough to meet his expenses, all this money being one of the essential charges on the budget of the commune. Sometimes one *podesta* was appointed for two or more communes.

Rome: its government. For the municipal administration of Rome; the Fascists had appointed a governor, two vice-governors and ten rectors. The rectors were the heads of several municipal services, appointed for their technical knowledge. They were merely consulted, and had no deliberative power of any kind; all this work of deliberation and legislation for Rome was done by the national ministry. There was also a *consultori* of 80 members, named by the national government, to suggest measures for the consideration of the governor. 'They were not representatives of the people by election, nor were they responsible in the slightest degree for the conduct of the city's affairs.'[1]

Italy after the Second World War

It was at the end of 1934 that Italy invaded Abyssinia. In May 1935, the League of Nations applied sanctions against Italy on account of the latter's unprovoked attack on a peaceful people. Germany, under Hitler's regime, refused to apply the sanctions and this subsequently led to closer understanding between Italy and Germany, a deep personal friendship between Hitler and Mussolini, and the formation

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[1] *Government and Politics of Italy*, p. 219.

of the Rome-Berlin Axis as an anti-communist front, which was later joined by Japan. In return, Mussolini helped Hitler in the Czechoslovakian affair which led to the signing of the Munich Pact on September 29, 1938.

When Germany invaded Poland, early in September 1939, the Second World War broke out. Mussolini at first remained neutral but when France was overrun by the German armies and was on point of surrender, Italy declared war against the Allies and on the side of Germany. Three years later, when the Allied forces began battering the Italian forces, Mussolini became so unpopular that the Grand Council of the Fascist Party deposed him. Marshal Badoglio was appointed prime minister and the Italian capital moved from Rome to Brindisi. The Allies pushed forward their decisive assault against the axis powers, and their forces landed in Sicily. Italy sued for armistice which was concluded and an Allied Military Government (AMG) set up with the object of restoring order in the war-afflicted Italy and to purge the State of all fascist influence. The Badoglio cabinet was enlarged by the inclusion of representatives of all principal political parties which had earlier been suppressed by the Fascists, but were now revived. The first task of the Badoglio cabinet (after the signing of the armistice with the Allied victors on September 3, 1943) was the abolition of all Fascist institutions—the Grand Council, the Chamber of Fasces and Corporations, Fascists' star-chamber court, the notorious special Tribunal for the Defence of the State, and all the organs of the Corporate State. All Fascist organizations then went into oblivion.

In June 1944, the Allies occupied Rome. King Victor Emmanuel was forced to abdicate; he transferred the royal authority to his son Umberto who promised to abide by the verdict of the people regarding the future of monarchy. Umberto was made a Lieutenant-General; the Badoglio cabinet resigned and Ivanoe Bonomi was appointed premier. Later the German resistance in North Italy also collapsed. The way was now clear for the liquidation of the provisional government and the drawing up of a new democratic constitution which could be acceptable to the Allies who had still to be satisfied before peace treaty could be signed.

Cabinets followed one after another till at the end of November 1945, Alcede de Gasperi, the leader of the Christian Democrats, formed his ministry. Formal abdication of King Victor Emmanuel was proclaimed on May 9, 1946, and Umberto succeeded to the kingship.

In fulfilment of its promise, the cabinet ordered a referendum on the future of monarchy along with the election to the national assembly. These were decided by a popular vote of June 2, 1946. The Court of Cassation announced the voting on the future of monarchy on June 18. The figures showed : for the republic, 12,717,923 (54·3%) of the valid votes cast; for the retention of the monarchy, 10,719,284 (45·7%); invalid votes, 1,498,196. On June 18, the Provisional Government, without waiting for a formal proclamation of the republic ordered that court verdicts in future be issued in the name of the Italian people. Umberto left the country and thus came to an end the reign of the House of Savoy which had ruled over Italy since 1861.

The National Assembly of 1946. The popular vote of June 2, indicated that the republicans were strongest in the north and the monarchists in the south. The elections to the National Assembly held on the basis of proportional representation showed the following results :

Party	Popular vote (thousands)	Seats
Left	4343	104
Communists	4745	115
Socialists		
Centre	334	7
Action Party	8083	207
Christian Democrats	998	23
Republicans		
Right	1210	30
Uomo Qualunque (Common Man)	1559	41
National Democratic Union	636	16
National Freedom Bloc		
Others	1045	13
Small parties and Independents		
Total	22,953	556

The electoral districts for these elections were large, the number of seats varying from seven to thirtysix according to the population of the district.

Drawing up of a new constitution. The task of the Assembly thus chosen was of a two-fold nature. It had to draw up a constitution, and during the time it did so it had to designate and support a government. The National Assembly first met on June 25, 1946, and elected Enrico de Nicola, a former liberal leader, as the provisional president of the Italian Republic. Gasperi again formed a new cabi-

net including therein Socialists, Communists and Republican groups.

The Assembly then took up its other task, *viz.*, the drawing up of a new constitution, and this took nearly eighteen months. On December 22, 1947, the Assembly passed the new constitution by 453 votes to 62. It was put into force on January 1, 1948.

The new constitution of Italy consists of 139 articles and 18 transitional clauses. It is based upon popular sovereignty. Italy is described as "democrate republic founded on work." The legislative power is vested in a bicameral Parliament consisting of the Chamber of Deputies and the Senate.

The Chamber of Deputies is elected for a period of five years by universal and direct franchise, according to the specified method of proportional representation, one deputy for eighty thousand population. A deputy must be a voter and of 25 years of age at least. The first elections to the Chamber took place on 18-19 April, 1948. The present membership of the Chamber is 590.

The Senate is elected for a six year term on regional basis (the country having been divided into 19 regions, some large, others small), each region having at least six senators, one for two hundred thousand inhabitants. The president of the Republic can nominate five senators for life from amongst eminent men in the social, scientific, artistic and literary spheres. The first elections to the Senate were held on the same days as for the Chamber (April 18-19, 1948). The present strength of the senate is 237.

The constitution of the first democratic Parliament of Italy under the new constitution, as a result of the elections in April 1948, was as follows:

Party	Senate		Chamber Elected
	Elected	Nominated	
Christian Democrats	133	17	306
Communists	37	30	..
United Socialists	10	12	33
Left-wing Democrats	7	3	..
Liberals	5	5	..
Italian Socialist Party	30	11	6
Republican Party	6	6	9
Popular Democratic Front	..	..	183
National Bloc	..	..	18
Monarchist Party	..	..	14
Others (smaller groups)	10	19	5
Totals ..	238	103	574

Members to the Senate were nominated by the Head of the State. In the Chamber of Deputies, the Christian Democrats obtained a clear majority and so formed the first regular cabinet under the new constitution.

President of the Republic. The headship of the state is vested in a President, the President of the Republic. The electoral college for the election of the President consists of all members of the Senate and the Chamber of Deputies and three delegates from each of the nineteen regional Councils (1 from the Valle d'Austa).[1] A two-thirds majority is required for electing a candidate, but after a third indecisive scrutiny, an absolute majority is sufficient to elect a candidate. The President must be at least fifty years of age. His term of office is seven years. The President of the Senate acts as the Deputy of the President of the Republic. The President of the Republic can dissolve the chambers of Parliament except during the last six months of his term.

Besides symbolizing the unity of the nation, the President exercises a large number of prerogatives. He commands the armed forces, ratifies treaties, exchanges diplomats with other states, and nominates the Prime Minister. But all these powers are exercised by responsible ministers.

The Cabinet. The real executive power is vested in a Cabinet consisting of the Prime Minister; Deputy Prime Minister and Minister of Mercantile Marine; Deputy Prime Minister; Deputy Prime Minister for South Italian Affairs; Ministers without portfolio (two); Minister for Foreign Affairs; Minister of the Interior; Minister of the Treasury; Minister of Finance; Minister of Defence; Minister of Education; Minister of Agriculture; Minister of Justice; Minister of Transport; Minister of Posts and Telegraphs; Minister of Industry and Commerce; Minister of Labour; Minister of Foreign Trade; Minister of Public Works. Defeat of a government bill does not automatically involve the resignation of the government. To turn the government out of office a definite motivated motion of censure must be passed by the Chamber. As the Christian Democrats had the support of more than half the Deputies and almost half the senators, their leader Dr. de Gasperi headed the five successive cabinets formed during the four years, December 1945 and December 1949. In January 1950 he formed his sixth coalition cabinet. The cabinet works on the well-

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[1] The first President (Professor Luigi Einansi) was elected for a seven-year term on May 11, 1948, without the Regional representatives being present.

known principles of parliamentary government.

For purposes of administration, the country is divided into 19 regions of varying size. Each region has a regional council, the Junta (executive) and the President of the Junta. A government Commissioner supervises the state administration and coordinates it with the regional administration. The constitution defines the sphere of activity of the regional councils. The state is, therefore, a sort of quasi-federal one.

Constitutional Court. The constitution establishes a Constitutional Court which consists of 15 judges who are appointed, five each, by the President of the Republic, the Parliament (in a joint session of the two chambers), and the highest law and administrative courts. The Constitutional Court has rights and duties similar to those exercised by the Supreme Court in the United States. "It can decide on the constitutionality of laws and decrees, define the powers of the State and the Regions, judge conflicts between the State and the Regions and between the Regions, and try the President of the Republic and the Ministers." This shows how American precedents have influenced the drawing up of the Italian constitution.

To ensure the safety of democratic principles, the constitution has forbidden the reorganisation of the Fascist party. It has excluded all members and descendants of the House of Savoy from all public offices; they have no right to vote or to seek election; they are banned from the Italian territory. The State forbids the assumption or grant of titles of nobility.

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24

THE GOVERNMENT OF JAPAN

LOYALTY to the Emperor that amounts to reverential worship has been the theory not only of the Constitution but of the national religion of Japan from the accession of Jimmu Tenno to-day when the most pronounced socialist does not venture to whisper a word against the throne.

—J. H. LONGFORD

* * *

"The sober fact is that no nation probably has ever treated its sovereigns more cavalierly than the Japanese have done from the beginning of authentic history down to within the memory of living men. Emperors have been deposed; Emperors have been assassinated. For centuries every succession to the throne was the signal for intrigues and sanguinary broils. Emperors have been exiled; some have been murdered in exile....."

—J. CHAMBERLAIN

* * *

"There is to the Western mind—and especially to the mind of British and French individualists—something terrible about the certainty with which the Japanese leaders can count on the individual citizen to subordinate himself absolutely to the claims of the State. There seems to be nothing that a Japanese will not do if he holds that the State requires it of him."

—G. D. H AND M. I. COLE

BEFORE THE outbreak of the Second World War Japan proper consisted of five large and more than four hundred small islands, apart from hundreds of smaller lands adjacent to the islands. All of them put together covered an area of 147,611 square milles. She also had a large empire, which included Korea and hundreds of islands which covered an area of 113,051 square miles. After World War II, Japan had her territorial area cut down. It now consists of 4 islands of Honshiu, Kyushu, Hokkaido and and Shikoku, which cover an area of 141,529 square miles and a population (estimated on October 1, 1954)

of 88,300,000 souls.

Japan has a long history of seclusion from the rest of the world. In olden days the Japanese abhorred any kind of intermingling with foreigners. They considered, almost till recently, that their race was a favoured one. Their religion, Shintoism, was a symbol, so they believed, of all righteousness, benevolence, truth and purity which they had inherited from their ancestors. It is this religion which inspired the statesmen of modern Japan to make their country respected and feared not only in Asia but in the world.

Constitutional History

The Constitutional history of Japan may be divided into four periods, the first up to 645 A.D., which was the period of tribal rule, the Yamato clan holding supreme power over all other clans; the second period extends up to the beginning of the twelfth century, which is called the era of Taikwa (Great Reform); the third was the era of Shoguns which lasted up to 1868, which was "bewildering to Europeans, to the missionaries and traders of the sixteenth century as well as to the diplomats of the nineteenth century." The Shogun ruled on behalf of the Emperor having derived that authority from the latter. Several Shogunates ruled Japan during these centuries, the last of them being the Tokugawa Shogunate, with the end of which terminated the third period which was followed by the Meiji era or the "Enlightened Rule." It was during the later part of the third epoch that the European intercourse with Japan began and the Shoguns opened the closed doors of Japan to foreigners. It is of considerable interest to students of Japanese constitutional development to understand the causes of the downfall of the Tokugawa Shogunate and the rise of an enlightened class in Japanese history and politics.

Causes of the fall of the Tokugawa Shogunate. It was in the year 1210 that the Emperor conferred the title of Shogun (Generallissimo or the chief military head), the highest military honour on Minamoto who then got all the real powers of government which he began to exercise in the name of the Emperor. The Emperor remained only a nominal head. In 1603 Tokugawa secured the power of Shogunate for himself and thus began the rule of the Tokugawa Shogunate which lasted up to 1867 when the Restoration took place.

There were several causes of the downfall of the Tokugawa Shogunate. During the Shogunate government, the office of Shogun

became hereditary, though as hereditary regent of the Emperor. The power of the Emperor remained in name only. This was not liked by the people who worshipped their Emperor as representative of God on Earth. The Shogun power rested on force of military prowess and not on consent of the people.

Secondly, the Shogun government was a decentralised Government in which power rested on feudal basis. Feudal lords sprang up throughout the country. All power was exercised by nobles belonging to the southern aristocracy. The Western clans, therefore, became jealous of the power of the Shoguns and their supporters of the Southern clans. Hence the Western clans clamoured for restoring the central authority into the hands of the Emperor.

Thirdly, the foreign powers wanted admission into Japan which had remained isolated from the rest of the world. The Shogun who was ruling about 1860 was so weak that he and his supporters yielded to the demand of the foreign powers to get admission into Japan. When the United States of America annexed California in 1848, her nearest neighbour on this side of the Pacific was Japan. The United States government sent a mission under Commodore Matthew Calbraith Perry, with a large naval force to establish contact with the Japanese and sign a treaty of peace and amity. On March 31, 1854, the treaty was signed according to which the port of Shimoda was opened to the Americans; good treatment was to be accorded to shipwrecked men and goods; trade was permitted under Japanese regulations and supplies could be made through Japanese officers; the U.S.A. was granted most favoured nation treatment; and the U.S.A. could appoint consulor agents at Shimoda after eighteen months, if either government deemed it necessary. This treaty ended Japan's seclusion and later treaties with European powers were also signed. This was strongly disapproved by the public of Japan who did not like any foreign influence in their country.

Fourthly, the mutual jealousies of the clans who were supporters of the Shogunate weakened the position of the Shogun who could not resist the public demand for restoring all powers to the Emperor.

In 1867, the Restoration was inaugurated, when the Keiki Shogun gave up his title of Shogun without any opposition. On January 16, 1868, the young Emperor assumed all power to himself. It was at that time that the Shogun made a statement which gave an idea of what he thought of the ending of the Shogun rule and the re-establishment of the power of the Emperor: He said, "Unless the government is di-

rected from one central authority, foreign intercourse will weaken the foundations of the state. The Empire must be supported by all the peoples to keep it strong and this can be done only when all the power is exercised by the Emperor. National deliberations must be conducted on extensive scale." All these required that the feudal rule as it existed during the regime of the Shoguns must be put to an end.

On the Keiki Shogun's resignation, power in the state was obtained by the Emperor. Thus the Tokugawa Shogunate, which lasted for about 250 years, came to an end. It was followed by the Restoration with which began an era of reform and enlightened rule.

It may, therefore, be said that foreign impact hastened the abdication of the Tokugawa Shogunate and prevented the establishment of a new Shogunate in Japan.

The Period of Restoration and Reform (1868-1889).

With the fall of the Tokugawa Shogunate the fourth period of Japanese history began, the change from feudal to royal government. The Restoration of power from the Shogun to the Emperor was inaugurated on November 3, 1867 when the Shogun Keiki gave up his title without demur. On January 16, 1868, the Emperor Mutsuhito, a lad of sixteen, assumed all power. The government was reorganised, feudalism was abolished, local assemblies were created and local reform undertaken. Hence forward Japan started on the road to westernisation.

A national educational system was organised in 1871 based upon the school systems of the West, resulting now in making Japan the most literate country of the modern world. Railroads, telegraphs, a governmental postal system and a system of national banks were established. Factories grew up, and the factory system began to take the place of the older methods of manufacturing, so much so that to-day Japan is one of the leading industrial nations of the world. The feudal military forces were replaced by a modern army organised, armed and drilled according to western methods, and a beginning was made in the development of a modern navy, with the result that Japan became the foremost military and naval power in the world.

Methods by Which Westernisation of Japan was accomplished

The downfall of the Tokugawa Shogunate in 1868 marked the beginning

of the era of enlightened rule in Japan. It was really a peaceful revolution which changed the whole face of Japan in all respects.

At the time the Shogunate ended, power was seized by the four Western clans, but their mutual jealousies resulted in the victory of two of them. The leaders of these two clans took steps one after another to make Japan a modern power. The members of this group able and vigorous men received the title of *Genro* (elders) upon whose shoulders rested all responsibility for the progress Japan made towards the end of the nineteenth and the beginning of the twentieth century. This was accomplished by the following methods :

In 1869 was convened the first deliberative assembly which consisted of the representatives of 276 clans. Then the feudal system was abolished. Japan was then divided into various provinces for each of which the Emperor appointed a civilian governor who began to rule on behalf of the Emperor. Thus the power of the Emperor began to be felt in all parts of the Empire. In 1870 all class privileges were abolished. Those who belonged to the warrior class were newly permitted to engage in business and common people were allowed to enter into public duty, civil or military. The principle of the equality of all people before the Law was established. In 1868 was issued the Charter Oath which is called the Magna Charta of Japan. According to this Oath, the Emperor promised that (1) Deliberative assemblies will be established and all measures of government decided according to public opinion, (2) All classes of people, high or low, shall unite in carrying on the affairs of state, (3) All people shall be allowed to fulfil their just desires, (4) All absurd old usages will be abolished, (5) Wisdom and knowledge shall be sought throughout the world for promoting the welfare of the Empire. But in 1884 five classes of nobles were created and these formed the Upper House known the Japanese House of Peers under the constitution of 1889.

By 1890 constitutional form of government was established under the constitution of 1889 which itself was modelled on the study of constitutions of western countries.

Hence students and youngmen from Japan were sent to all the progressive countries of the western world to study various branches of knowledge and thereby benefit their own country. This led to Westernisation of Japan in all spheres of life, political, economic, social and cultural.

By the constitution of 1889, Legislative and Executive branches of the Government were separated. Many political associations were

formed. This led to the development of political parties and the adoption of Parliamentary form of Cabinet Government. Local Government through popularly elected local bodies was introduced in cities, towns and villages.

In 1885, and 1886, merit system was adopted for recruitment to public services under the government. Appointment and promotion in government services were based upon an examination conducted by a services commission.

A new Privy Council was created to advise the Emperor.

The legal system of Japan was revised and modelled upon the French system. A penal code and a code of criminal procedure were placed in operation. In 1899 the civil code as revised in the light of western experience was put into force.

Meanwhile industries on western lines were established throughout Japan. This brought her into close contact with western powers and this impact had its influence on all aspects of the life of the Japanese. Japan developed her army and navy on modern lines and soon became a world power after it had defeated Russia in the very beginning of the twentieth century (1904-5).

In this way, Japan, without losing the essentials of her old culture, became a modernised country on Western lines practically in all the spheres of her national life. The constitution of 1889 was based on the model of European constitutions. Scientific and industrial development, based on the study of her youngmen in different countries of Europe, changed the whole face of her economic life. Japan became a leading industrial country of the world.

Having accomplished the westernisation or modernisation of Japan, the government solved most of the difficulties it had to face at the time of the Restoration. The Charter Oath still remained to be fulfilled. Absolute power had to be replaced by Constitutional Government; all the people had to be conciliated so that national unanimity should be complete; the lower had to be raised to the level of the privileged classes and like them infused with the spirit of loyalty and patriotism.

And this did not wait long to accomplish. A very active spirit of constitutional reform soon began to develop itself among certain classes of the people. The press was growing in ability, circulation and, therefore, influence. Students who had been sent to the West, mainly to the United States and England, for educational purposes, returned, their minds full of abstract ideas of civil rights and freedom. They ascribed the marvellous prosperity of the two foreign nations to consti-

tutionalism. They assumed that material prosperity was a corollary of constitutional freedom. The press bristled with denunciations of the faithless and tyrannical government. Assassinations were openly advocated.

The Framing of the Constitution of 1889. The Emperor tried to sooth politically discontented people with reorganisation of the Cabinet. Prince Ito was sent abroad to study the governmental systems of Europe. On his return in 1889, he submitted his draft constitution for adoption in Japan. Ito had been impressed more by the constitutional system of Germany where the Emperor's position was still very high, than by the British system. He also preferred the French system of administrative law to the British Rule of Law. On February 11, 1889, the Emperor granted the Constitution Ito had prepared. Under the Ito Constitution the first elections to the Diet (Parliament) took place in July 1890. Thus started the later part of the fourth era in Japanese constitutional development.

The 1889 Constitution of Japan: its nature. The Ito Constitution opens with the declaration of the position and powers of the Emperor in the very first chapter. Chapter two is devoted to the Rights and Duties of the Citizens, while the remaining five chapters deal respectively with the Imperial Diet, the Ministers of State and the Privy Council, the Judicature, Finance, and Supplementary Rules. It contains seventy-six articles in all.

The Emperor occupied the most supreme position in the Constitution, as Ito believed in the development of constitutional practices through a slow evolutionary process rather than by an enforcement through statutory provisions. Article three of the constitution declared the Emperor to be "sacred and inviolable." Articles IV to XVII described the powers of the Emperor according to which he was the head of the Empire and combined in himself the rights of sovereignty; he exercised the legislative power with the consent of the Imperial Diet; he gave sanction to laws and ordered them to be promulgated; he convoked the Imperial Diet, opened, closed and prorogued it, and dissolved the House of Representatives; during the recess of the Diet he could issue Imperial Ordinances in case of urgent necessity to maintain public safety; he determined the organisation of the various branches of the administration; he had the supreme command of the Army and the Navy; he declared war, made peace and concluded treaties; he conferred titles of nobility; he could declare a state of siege; he exercised the prerogatives of granting pardon, amnesty, etc.

The people were granted liberty of abode; freedom from arbitrary arrest; secrecy of correspondence; right to hold property; liberty of speech, writing, publication, public meetings and associations; right of petition; right to appointments to public offices.

The constitution of 1889 was the result of a compromise between the old monarchical traditions and modern constitutionalism. As the result of the large powers of the Emperor and the Throne, the power of the Diet was more or less weak, as compared with that of legislatures of other modern countries, but in other respects the constitution adopted most of the principles of modern constitutionalism.

Rigidity. The constitution was a written one. The principle of a written constitution which results from the demand for a government of law, not of persons, was first adopted by the U.S.A. and France, and at present this principle is prevalent in all modern constitutions. The power to take initiative in a constitutional amendment was exclusively reserved to the Imperial Throne. The Diet could not initiate a project of a constitutional amendment, and even the people could not petition for it. The procedure of a constitutional amendment was more complicated than that of ordinary law-making. During the time of emergency, the constitution could not be amended at all, even though there was urgent necessity for it. Since its promulgation in 1889, the constitution had never been amended, partly because the initiative for amendment rested with the Throne and partly because the constitution provided for only general principles, leaving details to statutes and Imperial Ordinances. But since the courts of law could not annul unconstitutional statutes, the constitution was open to amendment by a statute in spite of the opinion of the framers that the Diet was not allowed to evade this restriction of the constitutional amendment by voting a law that might directly or indirectly affect any of the principles of the constitution.

Influence of custom. Mention must also be made of the influence of custom in the development of the constitution. Certain "conventions" or "understandings" existed which, though not of a legal character and not judicially enforceable, had profound importance in the actual working of the government. Among them may be mentioned the various advisory activities of the Genro (Elder Statesmen), including the naming of premiers, the practice of mutual responsibility by the cabinet members and the collaboration of the cabinet with parliamentary parties in the Diet. These and other constitutional conventions gave a vitality to the formal structure created by consti-

tutional law as in the case of England, the U. S. A. and other constitutions. The custom of parliamentary responsibility of the cabinet was practically established later on.

A Strong Monarchy. The Japanese government was a strong monarchy based on constitutionalism and was unitary in form. The principle of separation of powers was also followed in Japan, to some extent, but the strict separation of powers as in the U. S. A. did not obtain. The executive and the legislature were not entirely separated.

Centralised system. The Japanese system of government was highly centralised both functionally and geographically. In theory all the powers of government, executive, legislative, and judicial were in the hands of the Emperor according to the letter of the constitution. The constitution made no reference to local government, which was organised and administered under ordinances and statutes. Although in most quarters the constitution was considered to be a liberal and forward looking charter in view of the parliamentary conditions which then prevailed in Japan, there were some who criticised it as conservative or even a reactionary document. The constitution was criticised mainly because whereas the Imperial prerogatives were clearly and unquestionably defined, the people enjoyed no immutable rights but every right was to be enjoyed subject to law; because no amendment could be considered without the approval in the first instance of the Emperor; and because the system of ministerial responsibility which vested control of the ministers in the majority of the lower house, was not precisely granted. It cannot be denied, however, that a considerable degree of liberalization had taken place in the government since 1889 without any change in the fundamental law. As parliamentary experience increased, additional privileges were granted by law to the people until male suffrage was finally attained in 1926. And although the system of ministerial responsibility was not provided for in the constitution, it was not denied and from time to time the lower house had been able to control the acts of the ministers.

Adoption of Western Institutions. All the new parliamentary machinery of Japan, the assemblies, political parties, representative institutions, orders of peerage, privy council, constitution and the whole fabric of the central and local administration as well as the system of courts and jurisprudence, was either taken directly from the West or was profoundly influenced by Western methods or ideas. It

should not be expected, however, that the new ideas entirely supplanted the old. In its actual operation, the whole political organisation and administrative system was modified by customs and methods which had come down through the ages.

The Genro. It must not be supposed that the Japanese blindly copied the Western institutions. They adopted them to their own particular needs and conditions and that is the case in all things Western, political, economic, educational and social. As an example of the adaptation of Western institutions to Japanese conditions we may cite the case of the "Genro or the Elder Statesmen." Here was another custom of old Japan which profoundly affected the new constitutional regime. Just as the head of a family would turn to the oldest members for advice in any important matter, so the Emperor, head of the State, was accustomed to seek the opinions of a small number of able men whose wisdom and loyalty had been demonstrated. In Japan, the Elder Statesmen, might give counsel contrary to that presented by the cabinet and in such cases the opinions of the Elder Statesmen would prevail. Thus an advisory body was created whose influence surpassed that of the Ministers and the Privy Council as provided in the constitution. Ito, the framer of the constitution, was fundamentally liberal in his political views; Yamagata, the father of the Japanese army, was the head of what was known as the military group. The tragic assassination of Ito in 1909 left Yamagata as the most influential Genro. But in the next reign all these trusted advisers of the Meiji Emperor and his son had passed away.

Place of the Legislature. The Diet was merely a general supervisory body in legislation as well as administration; particularly as Japanese political parties had no definite party platforms which were distinguished from one another. They were inclined to accept almost unconditionally every policy which was formulated by the Cabinet which they supported. But in Japan there were other executive organs which checked the action of the Cabinet in some measure, that is, the Elder Statesmen, the Privy Council and the Lord Privy Seal. And above all was the influence of the Army.

The Privy Council: its powers. The Privy Council of Japan was quite different from the Privy Council of England. The Cabinet and the Privy Council were two separate and independent institutions each having its own legal status prescribed by law, although Cabinet ministers had their seats in the Privy Council by virtue of their office. The Japanese Privy Council was composed of one President, one vice-

President and 24 councillors. Cabinet ministers (twelve) also had their seats ex-officio. The members were all nominated by the Emperor, with the advice of the Prime Minister, from among those who had distinguished themselves as administrators, diplomats, judges, educators, generals and admirals. Party politicians were in practice, excluded from this body. Regarding the powers of the Privy Council the constitution said: "The Privy Councillors shall, in accordance with the provisions for the organisation of the Privy Council, deliberate upon important matters of state, when they have been consulted by the Emperor." Its function was merely of a consultative nature and it could not advise the Emperor of its own accord. It could not deliberate upon matters other than those on which it had been consulted by the Emperor, except in certain cases, such as in the case of the institution of a regency, when the Emperor could not exercise his power. According to the Imperial ordinance concerning the organisation and the functions of this council, matters referred to the council were as follows:

(1) Certain matters concerning the Imperial House.

(2) Drafts and doubtful points relating to articles of the constitution, and to laws and ordinances being accessory to the constitution, such as the law of election of the members of the House of Representatives, the law of the Houses, law of finance, the Imperial ordinance concerning the House of Peers, etc.

(3) The proclamation of a state of siege, emergency ordinances issued pursuant to article 8 of the constitution and other Imperial ordinances with the provisions of a penalty.

(4) International treaties and pledges; and

(5) Matters relating to the amendment of the Imperial ordinance concerning the organisation and the function of the council.

Lord Privy Seal. The Lord Privy Seal, who was an organ of the Imperial House, also advised the Emperor in state affairs. Those who had been appointed to this post were wholly Elder Statesmen of the highest standing. The most important function of this official was to advise the Emperor in the case of the formation of a new Cabinet, but in practice the Elder Statesman recommended a new Premier to the Emperor. The constitution made it possible for the Emperor to select his ministers irrespective of the political situation in the Lower House. The principle of ministerial responsiblity had not been firmly established, but every political leader knew that without the support of a majority in the Lower House, the ministerial progress was bound

to meet at times with baffling opposition. The Privy Council had often been attacked by liberal leaders because free from all political control, it was in a position to advise the Emperor to reject the proposals of the ministry of the time.

The Legislature

The Imperial Diet was composed of two houses—House of Representatives and House of Peers. The bicameral system of Parliament was thus adopted by Japan.

How composed. The House of Peers consisted of the following six classes of members, *viz.*, (1) The male members of the Imperial Family who have attained majority; (2) Also princes and marquesses over 30 years of age; (3) Representatives of counts, viscounts and barons who are elected by their respective orders for a seven-year term; (4) Imperial nominees of three classes, *viz.*, (a) Imperial nominees selected for service to the state or for erudition; (b) Representatives of the highest taxpayers, and (c) Representatives of the Imperial Academy. The membership of the Upper House, which had increased by approximately 106 since the Diet was established, had risen to 400.

Lower Chamber. The *House of Representatives* was composed of 466 elected members, which came to the proportion of one representative for a population of 133,309. The life of the House was 4 years. Every member received an annual salary of 3,000 yens and free travelling facilities on government-owned railways. The House elected a speaker, a vice-speaker and a secretary, each of whom was provided with official residences.

Powers of the Legislature. Prince Ito maintained that "The use of the Diet is to enable the head of the state to perform his functions and to keep the will of the state in a well-disciplined, strong and healthy condition. . the duty of the Diet is to give advice and consent."[1] Both the Houses enjoyed the power to vote upon projects of law submitted to them by the government and could respectively initiate projects of law. Both Houses had co-equal powers except that the House of Peers was given lesser time to deliberate upon the annual budget; but it could even restore the appropriations rejected by the House of Representatives. As a matter of principle, theoretically all legislation

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[1] This was tried to be achieved in practice also.

was made with the consent of the Diet except in the case of ordinances and treaties. The projects of constitutional amendments were exclusively initiated by the Throne and the Diet had only consultative power. In the discussion of the day a government bill was given precedence over an ordinary one.

The extensive ordinance power of the government operated as a blanket limitation upon the legislative power of the parliament, although the constitution provided that "no ordinance will alter laws". But the emergency ordinances could change a law and the Diet was rendered helpless to reject or annul these ordinances owing to the lack of assured majority, its forced dissolution or some other instrumentalities adopted by the mighty executive to force its own will.

Control over finances. Both the grants of expenditures and the exacting of revenues were subject to the will of the Diet. The expenditure and revenue of the State required the consent of the Imperial Diet by way of the annual budget. Further the budget was "a sort of gauge to be observed by the administrative officials", as Prince Ito said. The Diet could initiate a revenue bill. The revenues were collected by law and not by budget. Revenues of the nature of compensation, such as administrative fee, did not always require the consent of the Diet. In noting the budget the Diet exercised only the supervisory power and not the legislative one. Every year all expenditures of the government were laid before the legislature in the form of an annual budget and the government could not go beyond what was sanctioned by the Diet. The Diet had no power to initiate the budget; its powers were simply limited to amending or rejecting it. Like the British Parliament, the Diet had no power to increase the budget. The constitution itself laid down the list of the expenditure which the Diet could neither amend nor reject without the concurrence of the executive. They were (1) expenditure caused by or resulting from the executive power of the Throne such as Imperial Ordinance or treaties, provided that the expenditures were provided for in the budget of the preceding year and thereby approved by the Diet. For the maintenance of different branches of administration, such as, army, navy and civil service, (2) such expenditures as might have arisen by the effect of law, such as pensions, etc. The idea was that once a law was enacted by the Throne with the consent of the Diet, it was binding upon the latter which could not prevent execution by reducing or rejecting any item; (3) Expenditures due to the legal liabilities of the government, for instance, interest on national loans, subsidies to the com-

panies and compensations of all kinds. The Diet could reject or reduce these expenditures but generally did not interfere in them.

Political Parties

In Japan the history of the party system goes back much further than the date, 1890, of representative government; but it was only in the year 1898 that, after the amalgamation of then two prominent parties, Jiyuto (Liberal Party) and Kaishiuto (Progressive Party), into one, Kenseito (Constitutional Government Party) to give a strong front to the bureaucratic Cabinet there was ultimately formed the first party Cabinet under the premiership of Count Okuwa, the leader of the new Party. Since then and up to 1923, there had been unsuitable conditions as to the nature and party of the Cabinets. Thereafter the Cabinet was purely a party Cabinet. In the House of Representatives there were a number of parties out of whom some were so weak that they could be termed as mere groups. At the election held on April 30, 1937, the following parties were returned to the 71st Diet.[1]

Minseito	179
Seiyu-Kai	175
Labour	36
Independents	29
Showakai	18
Kokumindome	11
Other groups	18
Total	466

In the House of Peers there was no political party; but all the members could be classified under these six groups. The Keukyu-Kai, The Kosei-Kai, The Koyu-Club, The Chawa-Kai, The Dosei-Kai, The Mushozoku-Dan.

The Judiciary

Independence of Judges. James Bryce aptly maintains, "There is no better test of the excellence of a government than the efficiency of its Judicial system, for nothing more nearly touches the welfare and

[1] *Statesman's Year Book*, 1939, p. 1093.

security of the average citizen than his sense that he can rely on the certain and prompt administration of justcie."[1] In Japan justice was administered by the courts of law, whose organisation was determined by law, according to law, in the name of the Emperor. The independence of the judicial organ of administration was guaranteed by the constitution itself. But in practice it retained its oriental form, that is, subservience to the executive. The appointment of judges and public procurators was in harmony with law and so was their dismissal. As the constitution said: "No judge shall be deprived of his position, unless by way of criminal sentence or disciplinary punishment." The executive was helpless on those points; but it exercised its influence through its power of promotion of these judicial officials. Again in matters of criminal cases, the public procurators under the guidance of the executive determined the actionability or otherwise of a case in order to maintain the uniformity and unity of the penal policy of the State. The judiciary could refuse to apply invalid ordinances, but unlike a Federal Court it could not question the validity of any law passed by the Imperial Diet, and further the Throne had the power of pardon and commutation of punishment sanctioned by the Emperor. Thus, the legislative power was supreme and the executive and the judicial powers were under the legislative power.[2] There was no separation of powers in the American sense of the term.

Following the continental system the Japanese constitution divided the courts into two broad heads: the ordinary courts and the courts of Administrative Litigation. Out of the total number of 340 ordinary courts, 281 were local courts, fifty-one were district courts, seven were appellate courts and one was supreme court. The judges and procurators were men of university training, and they were appointed under Civil Service regulations after examination. The age limit was sixty-three years, except for the president of the Supreme Court, who retired at sixty-five. Procurators were appointed to all ordinary courts and were closely integrated with the system of judicial administration and decision. They conducted preliminary investigations and represented the public interest in cases of public concern. There was the jury system also, but it was much restricted as compared with that of other countries. Article I of the Jury Act of 1923, provided that "in criminal cases the court may, in accordance with provisions of this law,

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[1] James Bryce, *Modern Democracies*, vol. II. p. 384.

[2] Naokichi Kitazawa, *The Government of Japan*. p. 86.

adjudicate on facts by referring the case to the deliberation of a jury." A Jury was composed of twelve male citizens, thirty years old or more. Its jurisdiction was confined to criminal cases in prefectural courts. Besides these ordinary courts there were military courts, police courts and other special courts. The military courts were composed of civil judges and military officers. They dealt only with criminal actions against persons of military service. The police courts consisted of police officers and had only summary jurisdiction over offences classified as police offences, involving detention of not more than twenty days or fines not exceeding twenty yens. Special courts included juvenile courts, martial courts, prize courts and consular courts.

Local Government

"Democracy in Japan has not sprung up spontaneously from below but has been nurtured by far-seeing leaders at the top." In Japan no element of self-government was secured as the result of any great national awakening. The system was based on a law of 1888, but in the case of Tokyo, Kyoto, and Osaka the laws of 1898 prevailed. The system like that of France was hierarchical and deconcentrated or centralised. There were two kinds of local governments, namely, prefectures and cities, towns and villages.

Prefecture. For administrative purposes, Japan was divided into 46 prefectures. In the prefecture the head of the executive was the governor or prefect. Like the prefect of the French department he had double status. As an agent or official of the central government he had the full charge of local administration which was neither reserved exclusively to the Ministers of State nor left to the local self-government authority. All elections, education, poor relief, police, public health, protection of industries, conscription affairs, supervision of subordinates, etc., fell within his jurisdiction. In the other capacity, that is, as a chief executive of the prefecture, he controlled and supervised all matters left for self-government with the consent of the Legislature, if he so desired. He was responsible to the ministry of Home Affairs. He was an official of the Chokusin (second) rank. He was the repository of power.

Cities. These prefectures were divided into 10 cities, 1,985 towns and 1,044 villages. They all were the successsors of the old 636 counties which prevailed till 1924. Like the prefecture, these smaller units had also got their own legislature and executive. The city legislature was

composed of the City Assembly and the City Council. The former was elected for four years by popular vote. The Assemblies varied in size according to population. Meetings were convened and closed by the Mayor.

Rural and Urban. There was no difference between the town and village government, except in name. The chief executives were elected by the village or town assembly, with the approval of the prefectural governor. The powers and composition of the legislature were based upon the city model. Some villages, under special conditions, were allowed, with the approval of the governor, to have an assembly of all voters instead of the elected village assembly. This assembly was somewhat like the 'Landsgemeinde' in the small cantons of Switzerland or the New England system of township government. Sometimes local syndicates of cities, towns and villages were formed with the approval of the governor to look after certain common purposes, such as public health, road and bridge, building, irrigation and education.

Central control. The control of the central government over the local units was very large, chiefly because the governor or the prefect was an official of the central government. This control was exercised mainly through the Ministry of Home Affairs instituted in 1894. It was the final authority in all matters not delegated to other central agencies. No doubt, this system gave uniformity, unity, security, order, peace and quiet. But the efficiency was sacrificed by the political character of the tenure of the office of the prefectural governor. In fact, what Professor Munro says about the French local government was also true of the Japanese local government. He says, "Centralisation is its essense, centralisation raised to the n^{th} power. All authority converges inwards and upward. It is a system that can be chartered in the form of a perfect pyramid." Later there was a tendency towards decentralisation and the abolition of the country government system was illustrative of it.

Japanese Constitution of 1946

Japan under the Allied Occupation. It was on September 2, 1945, that the Japanese formally signed the surrender terms on board the U. S. S. Missouri in Tokyo Bay, after suffering total defeat in World War II. According to the previously signed Potsdam declaration, the Japanese mainland was occupied by the Allied Supreme Commander

General Douglas MacArthur. The United States Government instructed the Supreme Commander to follow two objectives in Japan, first "to insure that Japan will not again become a menace to the United States or to the peace and security of the world", and, second, "to bring about the eventual establishment of a peaceful and responsible government which will respect the rights of other states and will support the objectives of the United States as reflected in the ideals and principles of the Charter of the United Nations." The new government was to conform to democratic principles and to rest on the freely expressed will of the people. Accordingly, the military controls were eliminated. Shinto State was disestablished, militarism in schools was abolished, political prisoners were released, freedom of expression of opinion was secured.

How the New Constitution was made and promulgated. The Japanese cabinet, in consulation with General MacArthur, presented the draft of a new constitution on March 6, 1946, which was accepted with minor changes by the Japanese Diet and finally promulgated by the Emperor in an imperial rescript on November 3, 1946. This constitution is in sharp contrast with the constitution of 1889, for the preamble states: "We, the Japanese people acting through our duly elected representatives in the National Diet....do proclaim that sovereign power resides with the people....Government is a sacred trust, the authority of which is derived from the people, and the benefits of which are enjoyed by the people."

Rights of the People in the Constitution. Thus this constitution is based upon the sovereignty of the people who renounce war for all time. Chapter 3 of the constitution enumerates the Rights and Liberties of the people, which are: equality under law; no discrimination because of race, creed, sex, social status, or family origin; no extension of the peerage and no inheritance of titles of nobility; the inalienable right to choose public officials and to dismiss them; secrecy of the ballot; the right of peaceful petition; prohibition of involuntary servitude except as punishment for crime; freedom of religion and of religious organisation, with a prohibition of government support for any religion; freedom of assembly, association, press, and all other forms of expression; freedom of occupation, and of emigration and expatriation; academic freedom; equality of sex in marital relations, including property rights, inheritance, choice of domicile, and divorce; free public education; the right to work, with prohibition of expoitation of child labour; right of workers to organise and to bargain collectively;

inviolability of private property as defined by law and in conformity with the public welfare; no person to be deprived of life or liberty, except according to processes established by law; no search or seizure without warrant; and the right to a speedy public trial by an impartial tribunal in all criminal cases.

The Legislature

The Legislature and its functions. The constitution votes all legislative power in the Diet as the highest organ of state power and sole law-making organ of the State. It consists of two houses, *viz.*, the House of Representatives (of 467 members) and the House of Councillors (of 250 members). The members of both houses are elected by the people, the number of members of each house is determined by law. The House of Representatives is elected for a four-year term. Members of the House of Councillors are elected for six years, half of them retiring every three years. Members of the Diet receive payment and allowances and enjoy freedom of speech. Each house regulates its business and determines disputes regarding eligibility of its members. Their deliberations are public but secret meetings may be held when demanded by two-thirds or more of those present. Each house elects its own president and other officials.

Powers of the Diet; how laws are made. The rules of procedure, etc., are made by each house for conduct of its own business. The Prime Minister and other Ministers of State can attend and speak in any house but vote only in the one they are members of. The Diet sets up a court of impeachment for trying those judges against whom removal proceedings have been instituted. The ordinary session of the Diet is held once per year, but the Cabinet may convoke extraordinary sessions. Ordinarily, a bill becomes law when passed by both houses. If the House of Councillors fails to take a final decision within sixty days after receipt from the House of Representatives, or upon which the House of Councillors makes a decision different from that of the House of Representatives, the measure becomes a law "when passed a second time by the House of Representatives by a majority of two-thirds or more of the members present." But this does not preclude the House of Representatives from calling the meeting of a joint committee of both Houses, provided by law. With regard to the budget the constitution lays down: "Upon consideration of the budget, when the House of Councillors makes a decision different from that of the

House of Representatives, and when no agreement can be reached even through a joint committee of both Houses, provided by law, or in the case of failure by the House of Councillors to take final action within thirty (30) days, the period of recess excluded, after the receipt of the budget passed by the House of Representatives, the decision of the House of Representatives shall be the decision of the Diet."

This also applies to the ratification of treaties.

Amendment of the Constitution: how finally made. In regard to the amendment of the constitution, proposals are initiated by Diet and finally referred to the direct vote of the people thus: "Amendments to this Constitution shall be initiated by the Diet, through a concurring vote of two-thirds or more of all the members of each House and shall thereupon be submitted to the people for ratification which shall require the affirmative vote of a majority of all votes cast thereon, at a special referendum or at such elections as the Diet shall specify." After people's ratification has been obtained, the amendment is immediately promulgated by the Emperor in the name of the people, as an integral part of the Constitution. The Constitution being the Supreme law of the land (Art. XCVIII), the method of its amendment is a peculiar one combining the sovereignty of the people and the Emperor's dignity as the symbol of State unity.

THE EXECUTIVE

The Emperor; his position and powers. The Japanese Constitution makes a clear distinction between the nominal (the Emperor) and the real (the Cabinet) executive. The Emperor is the Symbol of the State and of the unity of the people; his position is derived from the will of the people in whom resides ultimate sovereignty. Succession to the Imperial Throne is governed by the Imperial House Law as passed by the Diet. The Emperor is a constitutional head and all his acts in matters of state require the advice and approval of the Cabinet which is responsible for such acts. The Emperor has no powers in the field of government; all his powers relate to his headship of the state. He appoints the Prime Minister as designated by the Diet. In the similar manner he appoints the Chief Judge of the Supreme Court. With the advice and approval of the Cabinet he peforms these acts in matters of state and on behalf of the people: Promulgation of amendments of the constitution, laws, cabinet orders and treaties; Convocation of the Diet; Dissolution of the House of Representatives; Attestation of the

appointment and dismissal of Ministers of State and other officials as provided by law, and of full powers and credentials of Ambassadors and Ministers; Attestation of general and special amnesty, commutation of punishment, reprieve, and restoration of rights; Awarding of honours; Attestation of instruments of ratification and other diplomatic documents as provided for by law; Receiving foreign ambassadors and Ministers ; Performance of ceremonial functions.

Under the new constitution, the Emperor has lost the sovereign prerogatives and the exalted religious authority which he formerly possessed. Art. VIII further delimits his powers thus: "No property can be given to or received by, the Imperial House, nor any gifts can be made therefrom, without the authorisation of the Diet."

The Cabinet; its composition and powers. The executive power is vested in the Cabinet consisting of the Prime Minister (who is its head) and other Ministers of State as provided for by law; the Cabinet is collectively responsible to the Diet. The Prime Minister is designated from among the members of the Diet by a resolution of the Diet. In case of disagreement between the two Houses in designating the Prime Minister, even after a joint session thereof, or the Councillors' failure to designate within ten days of the House of Representatives have made the designation, the decision of the Representatives is taken as the decision of the Diet. The Emperor then formally appoints the Prime Minister as designated by the Diet. The Prime Minister appoints the Ministers of State, a majority of whom must be chosen from among the members of the Diet. The Prime Minister may remove the Ministers as he chooses. On a motion of no confidence passed by the House of Representatives or on rejection of the motion of confidence, the Cabinet as a whole resigns, unless the House of Representatives is dissolved within 10 days.

The Prime Minister submits all bills and makes reports on general national affairs and foreign relations to the Diet, on behalf of the Cabinet, and exercises general supervision over the different administrative branches. The Cabinet, as a whole, performs the following functions, besides general administration: Administer the law faithfully, Conduct affairs of State; Manage foreign affairs; Conclude treaties, subject to subsequent approval of the Diet; Administer the civil service in accordance with standards established by law; Prepare the budget, and present it to the Diet, (The Diet has final control over all taxation, monies, and expenditure); Enact cabinet orders in order to execute the provisions of this Constitution and of the law; Decide on general

amnesty, special amnesty, commutation of punishment, reprieve and restoration of rights. All laws or orders issued by the Cabinet are signed by the competent Minister of State and countersigned by the Prime Minister.

The Prime Minister and all other Ministers of State are civilians. This bars the appointment of military men to Cabinet rank.

The Judiciary

The Judicial Power is vested in a Supreme Court and in such inferior courts as are by law established. This is just on the model of the American system. No extraordinary courts can be established. Nor is the executive to exercise final judicial power in any case. All judges are independent in the exercise of their functions. They cannot be removed from office except by public impeachment or unless declared mentally or physically unfit. The judges of inferior courts are appointed by the Cabinet from a list submitted by the Supreme Court. The Supreme Court is vested, like the American Supreme Court, with the power to decide the constitutionality of any law, order, regulation or official act.

Such is the new constitution of Japan; it abolishes militarism, Shintoism and the absolutism of the Emperor. It establishes a truly democratic government with a parliamentary type of executive with final power and sovereignty in the people.

On way to amendment. It is futile to assert that the constitution of 1946 has introduced real democracy in Japan. The constitution was forced by the American victors on a defeated and sullen people under duress. The Article relating to renunciation of war and non-militarisation can never be followed in practice. The Japanese Premier Kishi, speaking on October 3, 1958, at Tokio spoke of the necessity to amend the constitution, not for increasing the powers of the Emperor but for introducing real democracy. He considers both the extreme Right and the extreme Left in Japanese politics as the two obstacles to the establishment of democracy. Hence the future amendment of the constitution will aim at the creation of a real democratic way of life.

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25

THE GOVERNMENT OF CHINA

If the passage of 4,000 years has affected the Chinese no more than the gliding of an hour, the existence of this great impassive people has not been without its effect upon the nations of Europe as upon the races of the Farthest East.

—ANGUS HAMILTON

MODERN CHINA occupies now the most important place in world politics. It is the largest state, in population, having 601,938,035 souls spread over an extensive area of 9,736,000 kilometers, lying north of the Himalayan ranges and south and east of the Soviet Union. The People's Republic of China consists of China proper (with its 25 provinces), Inner Mongolian Autonomous Region, Tibet and the three municipalities of Peking, Tientsin and Shanghai. The capital of the Republic is at Peking.

HISTORY OF THE CONSTITUTION

The history of the development of the Chinese people falls into different periods, the ancient being older than the age of Greek and Roman civilizations. None of the European nations can boast of a history of more than a millenium and a half if we date back the birth of France to the days of Clovis. A thousand years before Clovis Rome was only the chief city of central Italian confederation; of Macedonian Empire there was no trace left after three hundred years of its establishment. And none of the Greek states was till then known to exist. But today in the Far East China lives as the inheritor of the most ancient civilisation known to man; it is a country "vast in extent, painfully populous, a civilisation complex, elaborate, artificial to a degree, and tracing back its unbroken history beyond the date at which the Hebrew historian fixed the Deluge." To the Western eyes the Chinese may have appeared to be a stagnant people. As the China man lived in the days of Confucius, so he has lived for two thousand five hundred

years. China remained in voluntary seclusion or isolation, as the European adventurers thought in the beginning of the modern period, for a few centuries, but she had had direct cultural and spiritual relations with Ancient India from which she received the ethical doctrines of the Buddha. Dr. Legge thinks that the name *China* came to the Chinese from India where during the reign of the Indian monarch Kanishka in the second century A. D. (according to the narration of the Chinese pilgrim Yuanchuang who came to the Punjab in the sevenh century and saw the district) where the Chinese hostage was assigned a district which came to be known as Chek-ka or Tek-ka. The name China appears in the Brihat Samhita, a book composed in the sixth century A. D. Undoubtedly the name China was applied to the country after the Indian Buddhists went there to propagate their doctrines.

Ancient China. Three dynasties of antiquity ruled over China, namely, Hsi (with its Eighteen rulers from 2205 B. C. to 1766), Shang (with its Twenty-eight rulers during 1766-1122 B. C.) and Chou (with its thirty-five rulers during 1122-249 B. C.). The last dynasty, Chou, was the dynasty of philosophers. There is advanced a theory that the Chous were perhaps foreigners of Tartar origin. Several feudal estates were formed over which the Chous held hegemony. Thereafter several dynasties ruled over the different parts of the extensive country till the emergence of the Tang Dynasty (618-907 A. D.). This period is regarded as the most glorious in Chinese history due to progress in art, science and literature. It was during this period that the old system of public examinations for literary degrees was reinstituted. The Tang dynasty was followed by several others till the rise of the Manchu dynasty towards the close of the sixteenth century A. D.

The Manchu dynasty in China. The Manchu dynasty attempted to bring the far flung parts of the country within its own domination and by the middle of the seventeenth century the Manchu Empire was completed, with their homeland (Manchuria) and the Eighteen provinces into which the conquered territory (China proper) was divided. Tibet was brought under their control about 1700; Mongolia by 1760; and Eastern Turkestan (Sinkiang) by 1789.

The Manchu Emperor was at the head of this vast empire, who possessed immense powers, theocratic, patriarchal and autocratic. Twelve emperors of the Manchu dynasty ruled during the period, 1616-1908. Among them the reign of Kang-hsi (1662-1722) is dis-

tinguished for his patronage of literature and the high standard attained in arts for which China became particularly famous. It was during this period that the ceramics industry reached its high water-mark; and even today the Chinese pottery of that period is prized highly and fetches high prices in the market of antiquities. Kang-hsi was himself a great scholar; the dictionary bearing his name and known as the "Sacred Edict" was compiled under his patronage. It contains sixteen maxims concerning the duties of men in their own families, towards their neighbours, the importance of agriculture, respect for the law of the land, etc. It was promulgated by him when he was only seventeen years of age.

The reign of Chien-lung (1736-1795) who succeeded Yuan-chung, stands on a par with that of Kang-hsi for the general prosperity of the country and the enlightened form of government enjoyed during his peaceful reign. But with the advent of his son's reign (Chia-ching, 1796-1821) the peace which the country had enjoyed was seriously disturbed. It was during his reign that Lord Amherst's mission which arrived in Peking in 1816 failed because Amherst declined to appear before the Emperor in his travelling dress after his arrival, and make prostrations according to the Chinese customs. The East India Company which had been carrying on its fruitful trade with Foochow and Amoy since 1664 succeeded in 1864 in acquiring a footing in Canton and entering into trade competition with the Portugese who had jealously guarded their trade monopoly with China. Thus was established British connection with China, which proved to be the beginning of a new movement for the unification and nation building of China. The British merchants found trade in opium with China of great profit, but it led to evil effects on the health of the Chinese.

Causes and results of the First and Second Opium Wars (1841 and 1858) in China

These wars are called Opium Wars because one of the important causes leading to them was the Chinese opposition to the British carrying on trade with Chinese people in Opium which was declared by the Chinese Government as a contraband. In reality, however, the real conflict between Britain and China was that the British wanted to get special rights of various kinds, including equality of status in dealing with the Chinese Government, in China.

The East India Company held the British monopoly for trade with

China. The Chinese Government had in 1720 authorised a Chinese Guild, called the *Hong* merchants of Canton to handle all trade transactions with foreigners. The Chinese Government was anxious to prohibit the eating and smoking of opium by its subjects and therefore it took all possible steps to prevent trade in opium between her subjects and the British traders who used to carry opium from India to be sold to Chinese. In 1800 all trade in opium was prohibited by the Chinese Emperor. But, secretly the British merchants sold opium to the Chinese in return for silver. The Chinese officials looked upon this transaction as draining of China. The Chinese Emperor was very anxious to prevent the illegal trade in opium.

The British merchants used to trade with the *Hong* merchants from the port of Macao. In 1833 when the monopoly of trade enjoyed by the East India Company was ended, the British Government sent Lord Napier to supervise the British traders in China. He tried directly to deal at Canton with the Chinese merchants. This was objected to by the Chinese Government who insisted on his return to Macao and to deal through the *Hong* merchants. He was later replaced by Captain Elliot who assumed full responsibility for all the British-owned opium to be delivered to the Chinese Government. The British merchants were not pleased with the steps taken by Elliot to control the opium trade. The British merchants later on retired to Hong Kong from where they traded with Chinese merchants whom they allowed to fly the British flag over their boats carrying British goods. By this concession, the Chinese merchants favoured by the British traders used to carry on trade in contraband goods prohibited by the Chinese Government. The officials of the Chinese Government demanded bond from the British merchants for not trading in contraband. The British merchants refused to comply. Later, there was an altercation in which a Chinese was killed by British sailors. War between China and Britain followed other events and in 1841 the British bombarded Canton.

This first Opium War was ended by the Treaty of Nanking by which:

(1) Friendship between China and Britain was established ;

(2) The Chinese ports of Canton, Amoy, Foochow, Ningpo and Shanghai were opened to British trade and residence ;

(3) The island of Hong Kong was ceded to Britain ;

(4) Fifteen million dollars were paid by the Chinese Government as compensation for the losses suffered by the British merchants and the cost of the British expedition ;

(5) Regular import and export dues and tariffs were to be promulgated;

(6) The future communications between the British and Chinese Officers were to be made in a manner which gave equality of status to both.

These Treaty rights which the Chinese Government was forced to give to the British were very much resented by the Chinese population, particularly at Canton where it had suffered serious losses. On the other hand, the British merchants assumed high air for having got much more than they had formerly expected or ever demanded. Consequently, the relations between the two were by no means happy and amicable. The Chinese Government later on granted similar concessions to the Americans also.

The British merchants at Hong Kong then used several devices to carry on smuggling, into Chinese territory, of contraband goods. They allowed the Chinese boats carrying British goods to fly the British flag while carrying these goods into the Chinese territory. Once the Chinese officials got aboard the Lorcha Arrow and pulled down the British flag. As feelings between the two, the British and the Chinese at Canton, had already been bad, the Arrow incident made their relations worse.

In 1858 war again started between the British and the Chinese as the former took over the side of the Americans and French in their conflict with the Chinese over abuses of extra-territoriality. This war was terminated by the Treaty of Peking which very much broadened the terms of the first treaty settlement made by the Treaties of Tientsin. The British and the French were granted rights of free travel in China under passports issued by their Consuls; they maintained their resident ministers at Peking; the river Yangtze was opened to foreign merchantships with the right to trade at certain specified ports; additional ten ports were opened to foreign traders; a better definition of extra-territoriality was made; the Christians were to be protected by the Chinese Government; most favoured nation clause was inserted; higher indemnities were paid by the Chinese Government to the British and the French.

Thus the Treaties of Tientsin in 1858 and of Peking in 1860 gave considerable rights to foreigners in China, particularly to Britain and France. Later similar rights were acquired by the Americans but without use of force in China.

China struggles against foreign domination. The Chinese

were not satisfied with the two treaties of 1842-44 and 1858-60 which had ended the two Opium wars as they called them "unequal". Their resentment was especially against two provisions (*i*) Conventional tariffs and (*ii*) Extraterritoriality. By the first China surrendered her right to fix the customs duties on imports into China. On the other hand, the Western merchants objected to China levying arbitrary duties on imported goods and thus affording her chance to discriminate between foreigners. They thought that a published set of tariffs agreed upon by reciprocal negotiations would be eminently fair and desirable. The Chinese thought that this amounted to an encroachment on their sovereignty. Extraterritoriality freed the foreigners from subjection to Chinese courts and laws. The Chinese objected to it because they saw that "In criminal matters it placed foreigners, when defendants, under the laws and officials of their respective governments and when plaintiffs, gave representatives of their governments opportunity to see that justice was done in Chinese courts in which the cases were heard." Similar concessions were not enjoyed by the Chinese in the Western countries. Clearly, therefore, such a position of inferiority was galling to the Chinese. Extraterritoriality led to serious abuses on the part of the foreigners who, under its garb, gave protection to even the Chinese merchants and citizens who were allowed to use the foreign flags over their boats to escape Chinese laws and duties. The result was that the treaty ports became centres of corruption, virtually independent of Chinese control, and foreign dominated enclaves in the heart of China. The introduction of Christianity in China had already resulted in the slow disappearance of ancient Chinese culture.

The enlightened part of the Chinese people ascribed all this humiliation of their country to the weakness of the Manchu regime. This dynasty had already ruled over China for over two centuries and reached its zenith, and internal disorders and discontent against its continuance had started. Of the many uprisings against the Manchu regime, the Taiping Uprising was the most important. Resulting directly from the impact of the West, it was led by Hung Hsi-ch'uan, a village teacher who had been unsuccessful in the competitive examinations to enter civil service in the Manchu administration. He started a socio-religious movement which at a very early stage in the 1840's and 1850's assumed political aspect and aimed at the supplanting of the Manchu dynasty with a new one called T'ai P'ing (Great Peace) with Hung as the Emperor. The uprising suffered organisa-

tional and administrative weakness although it had the backing of the crude peasantry. With the help of the foreigners the uprising was crushed and the resulting peace gave opportunity to the Manchus to gain a reprieve.

As a result of the treaties China signed with the foreign powers she entered into diplomatic relations with the West, but for quite a long time it was a one-way traffic; while the foreign embassies were established in China, she on her part had not taken steps to have her diplomatic agents in foreign countries. In 1867, however, China engaged an American, Anson Burlingame, who had by his conduct towards the Chinese won their confidence. He was asked by the Chinese authorities to go to the United States as their ambassador with a Manchu and a Chinese as his colleagues.

As a result of this diplomatic mission a treaty between China and the United States was signed at Washington in 1868, which provided for the integrity of China, encouragement of Chinese labourers' immigration to the United States, reciprocity in the liberty to propagate religion, in residence and travel, and freedom from interference by the Americans in the development of China. Later on Chinese legations were established in several European states.

Meanwhile a war of short duration was fought between China and Japan over Korean question, Japan insisting on Chinese recognition of Korean independence and China claiming it as her tributary. In this China suffered defeat, and Korea was recognised as an independent state. China had to pay indemnity to Japan.

The most important sequel of the Chino-Japanese war was a threat to the integrity of China and the danger of her partition. The Western powers entered into competition with each other for lending money to China to enable her to pay the promised indemnity to Japan. These powers saw in such lending the golden opportunity to gain a footing in China to monopolise trade and control Chinese economy. Russia, France and Germany made different demands to obtain spheres of influence and each one succeeded in getting a slice. Britain saw in these demands a threat to her own dominant position. She acquired financial position in the railroad between Mukden and Peking. The Germans and the Americans acquired rights to construct different sections of the extension of the railroads. Other concessions which the foreign powers acquired consisted of establishment of banks and the acquisition of "concessions" in the port towns.

The United States, as a result of her victory in the Spanish-American

war of 1898 and the consequent annexation of Philippines, had by then become naturally interested in the western Pacific and was, therefore, not disposed to sit idly while the partitioning of China was taking place. The American Secretary of State, John Hay, enunciated the policy of "Open Door" in relation to China. He instructed the American ambassadors to Britain, Germany, Russia, France, Italy and Japan to attempt to obtain from the governments of these countries an assurance (1) that they would not interfere with any treaty port or any vested interest within any so-called "sphere of interest" or leased territory that they held in China; (2) that the Chinese treaty tariff would apply to all merchandise shipped into such ports within these "spheres of interest", irrespective of nationality, and that the duties thereon would be collected by the Chinese government officials; (3) that no higher harbour dues should be exacted from vessels of another nation entering the ports in the "spheres of interest", nor higher railroad charges demanded from other nations. This American policy meant equal opportunity for all in the trade with China.

All these happenings created great general discontent among the politically conscious Chinese and a new revolutionary nationalist movement against foreign domination of China and for the establishment of a truly republican government in China after overthrowing the Manchu regime, came into being.

Sun Yat-sen and new Chinese Nationalism. The soul of this new Chinese nationalist movement was Sun Yat-sen. Born in 1868 near Canton, Sun Yat-sen was first educated in missionary schools and became a professed Christian. In 1895 he took part in the revolutionary movement and had to flee China with a price on his head.

Of the many phases of the revolutionary movement that which merits special mention is the Boxer Uprising staged by a secrect society of the Boxers, so called because of their outward object to train youngmen in gymnastics and boxing but with the secret object of preparing them for the overthrow of the Manchu dynasty which, they thought, was responsible for the surrender of China to foreign powers. Necessarily it was an anti-foreigners movement and started its earlier adventures by violent attacks on foreign legations in Peking, and Chinese Christians whom the Boxers blamed for destroying Chinese culture and allying themselves with foreigners in the latter's attempts to dominate China. The Boxer movement resulted in the murder of a few foreign diplomats and a number of Chinese Christians. The foreign powers combined together and raised forces to combat the

rebellious Boxers and safeguard their own interests. They could not do more than protecting the legations as their forces were not enough to suppress the insurgents in the interior.

The United States again came forward and while asserting its policy to rescue the foreign legations and protect the lives and property and other interests of the Americans in China made it clear that "the policy of the Government of the United States is to seek a solution which may bring about permanent safety and peace to China, preserve Chinese territorial and administrative entity, protect all rights guaranteed to friendly powers by treaty or international law, and safeguard for the world the principle of equal and impartial trade with all parts of the Chinese Empire". Russia did not accept this and occupied Manchuria. The Allied armies reached Peking for the relief of the foreign legations. China was now at the mercy of the Allies. And it took another year before the Boxer uprising was suppressed and the Boxer Protocol signed on September 7, 1901.

The Boxer Protocol. The Protocol was termed the third treaty settlement, although it was not a treaty which required ratification. The terms of the document were in fact almost all of them fulfilled by the Chinese Government before it was signed. Its twelve articles may be divided into three categories, *viz.*, punitive, preventive and measures for establishing better relations between the parties. The first provided for reparation for the assassination of the German minister, Baron von Ketteler (Art. 1); punishment for the authors of the crimes (Art. 2); reparation for the murder of the Japanese diplomat Sugiyama (Art. 3); erection of expiatory monuments in the desecrated cemeteries (Art. 4); payment of a total idemnity fixed at four hundred and fifty taels with interest at four per cent, to be paid off in thirty-nine years or by December 31, 1940 (Art. 6). The second category of preventive measures demanded the prohibition of the importation of arms and ammunition, for two years and even longer if considered necessary (Art. 5); creation of a legation in Peking with adequate guards (Art. 7); the razing of Taku forts (Art. 8); occupation by allied troops of twelve specified places between Peking and Shanaikwan for keeping open communications between the capital and the sea; (Art. 9); the posting of certain edicts specifying the infliction of stated punishments for membership of anti-foreign society; the suppression of examinations and making provincial officials responsible for future disturbances (Art. 10). The last category included articles 11 and 12 to improve commercial and political relations by

providing for the amendment of commercial treaties, and placing the Waiwu Pu first in rank before the other Six Boards.

The Reformist Movement. The signing of the Protocol did not suppress the spirit of the Chinese revolutionaries who started the Reformist movement which was anti-foreign in spirit and aimed at the overthrow of the weak Manchu regime which was held responsible for all the ills of China and the humiliation suffered by the Boxer Protocol, and the final establishment of a republic. China had to pass through great difficulties; she was a virtual dependency of the foreign powers which were vying with each other for getting the uppermost hand. The Chinese youth by now trained in western methods of education and political institutions felt the urge to reform the various aspects of Chinese life, social, educational, economic and political. The reform movement had by now reached the different parts of the Chinese Empire. There was considerable unrest in the provinces, at which Peking took alarm. Province after province revolted; the six-year old Emperor had to make way for the establishment of a republic in 1911.

It was at this stage that Sun-yat Sen who had directed the revolutionary movement from abroad, Japan, the United States and Europe, arrived in China on December 25, while the peace conference convened by the various participants in the reform movement was still in session at Shanghai. The conference consisted of the representatives sent by different provincial assemblies. It assumed a representative capacity, declared China a republic and elected on December 21, Dr. Sun-yat Sen, who had been the acknowledged leader and soul of the Chinese revolutionary movement, as the first President of the Chinese republic. But the revolutionaries were themselves divided in different parts of the country.

The final settlement of the conflict came with the abdication, on February 12, 1912, by the child-emperor, in consideration of (1) a good financial settlement; (2) the promise of security for members of the Manchu race and of the Imperial Household ; (3) promise for the upkeep of the Imperial tombs. In the south, Yuan Shih-kai had been declared president of another republic. Dr. Sun-yat Sen, anxious to maintain the unity of the country, resigned his provisional presidentship in favour of Yuan. Sun-yat Sen continued to guide the nationalist movement outside the government.

China under Republican Rule (1912-26). Although differences between the various groups among the revolutionaries were temporized

and the provisional republic under Yuan Shih-kai continued, the most powerful group under Sun-yat Sen organised itself as Kuomintang, the National People's Party, in 1912. Yuan obtained debts from Great Britain, France, Russia, Germany and Japan and thus supplied himself with the sinews of war against the radicals and in 1915, considering himself sufficiently powerful, re-established monarchy and declared himself Emperor. This enraged the radicals who rose into revolt in Yunnan; later the rebellion spread to other provinces. Yuan postponed his coronation and then reinstated the republic; humiliated and chagrined, he lost his health and died on June 6, 1916. The former Vice-President, Li Yuanhung, automatically became President and the country was again united under the leadership of Kuomintang. The outbreak of World War I, however, brought in its train serious difficulties for the infant Chinese Republic. China sought help from the United States to preserve her neutrality.

Not long after Japan entered the War on the side of the Allies and formed Anglo-Japanese alliance; she presented China with her twenty-one demands (January 1915), in order to strengthen her position in South Manchuria and Eastern Mangolia; to secure possession of the German economic rights in Shantung; to obtain mining and railway concessions in central China. These demands caused great resentment, but situated as she was, China entered into negotiations and ultimately had to agree to fifteen of these demands in May 1915. Japan's position in the Far East was now so strengthened that at the close of the War the Washington Conference of 1921 discussed the situation in the Far East. The treaty relating to China was signed by the nine powers[1] in November whereby the signatory powers and in the first article (China not a party) agreed (1) to respect the sovereignty, the independence, and the territorial and administrative integrity of China; (2) to provide the fullest and most unembarrassed opportunity to China to develop and maintain for herself an effective and stable government; (3) to use their influence for the purpose of effectually establishing and maintaining the principle of equal opportunity for the commerce and industry of all nations throughout the territory of China; (4) to refrain from taking advantage of conditions in China in order to seek special rights or privileges which would abridge the rights of subjects or citizens of friendly States, and from counteracting

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[1] These were Great Britain, France, Italy, Belgium, the Netherlands, Portugal, Japan, the United States and China.

action inimical to the security of States. Later by another treaty China's right to enjoy tariff autonomy was also recognised.

The Russian Revolution of 1917 had its repercussions on China and a number of Chinese nationalists were attracted to the Marxian doctrines as a remedy for the economic and political ills of China. The Chinese Communists became the left wing of the revolutionaries. The other group organised by Sun-yat Sen into the Kuomintang worked in opposition to the Communists but in 1923, Sun-yat Sen entered into an alliance with the Chinese Communists then under the guidance of the Russian representative, Joffe, whereby the Communists, while retaining their own party organisation, were allowed to enter the Kuomintang. The Russians agreeing to help the establishment of Chinese national independence, sent Borodin to Canton to organise a new revolutionary republic; General Blucher was also sent to train the new Chinese army and Chiang Kai-shek (who had been in Russia as Sun's emissary) was placed at the head of the new Whampa Military Academy which produced the new leaders of the Chinese army. The Communists continued to indoctrinate the youth and largely succeeded in creating anti-foreign feeling and sympathy for Marxian doctrines. China was fast on the way to becoming Red. With the death of Sun-yat Sen on March 12, 1925, the Kuomintang acknowledged Chiang as their chief leader. Sun-yat Sen had enunciated his Three Principles: People's Government, People's Livelihood, and People's Nationalism (freedom from foreign control).

Sun's death removed the unifying factor; the Communists and the Kuomintang came into open conflict. Chiang's ability as a general stood him in good stead. His military successes resulted in the new unification of China. The Old republic came to an end and the Nanking Constitution under which it had worked lost its vitality. After completing his victorious March to the North and re-establishing the power and influence of the Kuomintang, Chiang resigned his military post, reassumed the leadership of the party and under the law of October 25, 1928, a new national government was established at Canton with himself as the head. On May 12, 1931, a provisional constitution by a National People's Convention was adopted. It purported to follow the three principles of Sun-yat Sen, under the leadership of Chiang Kai-shek.

In the North, Japan readvanced her designs on China and taking advantage of the Mukden incident of 1931, she occupied Manchuria

and set up there a puppet government with a new name 'Manchukuo' in place of Manchuria. The League of Nations failed to prevent Japan from violating the integrity of China guaranteed by the Nine Power Treaty of Washington in 1921.

The outbreak of World War II and the declaration of war between Japan and the United States gave Chiang an opportunity with the aid of England, France and the United States to strengthen his position and get the recognition of China as one of the five Great Powers which were given permanent seats on the Security Council of the United Nations. Japan's designs in China came to an end; she was driven out of China which she had occupied during the war. American forces and money helped the Chiang administration to fight the Communists who had started intensive campaign against the Chiang Kai-shek government. The Chinese Communists with the help of Russia succeeded in driving the Chiang government which fled to the island of Formosa in 1947, and the constitution it had forged in 1946 came to an end, after three years of its promulgation. The Communists then came into power and appointed a Committee to draft a constitution for the establishment of the People's Republic of China.

The People's Republic of China

The Communist regime that came into power on the flight of Chiang Kai-shek to Formosa (Taiwan) formed a Drafting Committee, headed by Mao Tse-tung, on January 13, 1953. The Drafting Committee produced a Draft Constitution which was then accepted in March, 1954, by the Council of the Central People's Government. The Draft was then seriously discussed in Peking and other provincial cities by about 8,000 persons, representing different democratic parties and groups, and people's organizations of all sections of society. The discussions lasted two months and certain amendments resulted from them. The amended Draft Constitution was then published all over China on June 14, 1954, for public discussions. It is estimated that about 150,000 million persons participated in the public discussions for over two months. In the light of the suggestions made in these discussions, the Drafting Committee of the People's Republic of China made further revisions in the original Draft, and these were adopted at the thirty-fourh meeting of the Central People's Government Council on September 9, 1954. This Draft was then reported to

the First National People's Congress of the People's Republic of China, at its first session, on September 20, 1954.

Chinese Government under the Constitution of 1954

On November 4, 1954, new governmental organisations set up according to the new Constitution came into existence. The People's Republic of China that had been proclaimed in Peking on September 21, 1949, by the Chinese People's Political Consultative Conference, with Mao Tse-tung as the Chairman, and inaugurated on October 1, with a common programme and 31 articles of Organic Law as the basis for the drafting of the Constitution, now began its constructive work, under the Constitution which derived its authority from the People themselves.

Analysis of the Constitution and the Organs of Government. The Constitution of the People's Republic of China epitomizes the struggle of the Chinese people to overthrow colonialism, feudalism and capitalism which, according to the Communists of China, were the three ills of that great people.

Liu Shao-chi, while introducing the Report on the Constitution before the first session of the People's Congress, summarised the changes China had made, under the following five heads:—

> First, China is no longer in the position of a colony or dependency under the domination of foreign imperialism. It has become a really independent state.....For more than a hundred years, the Chinese people made untold sacrifices to free themselves from domination by foreign imperialism. Their aspirations have come true.....Together with the Soviet Union and the People's democracies China has become a strong bulwark of world peace.
>
> Secondly, the age-old grip of feudalism on our country is now ended.....
>
> Thirdly, our country has put an end to the long period of chaos. It has achieved internal peace and an unprecedented unification of the entire mainland.....
>
> Fourthly, our country has, to a great extent, put an end to the situation in which the people had no political power. It has attained a high degree of democracy.....An enormous number of people who used to care nothing about affairs of state are now taking an active part in the political life of the country.
>
> And lastly, he stated that China's great ally, the Soviet

Union, with which China had entered into a thirty-year treaty of friendship was signed on February 14, 1950, had aided China in rehabilitating the national economy which, he said, had been ruined by the imperialists and the Kuomintang.

The Constitution of China consists of 106 articles grouped into four chapters, preceded by a long Preamble. The Preamble guarantees "that China can in a peaceful way banish exploitation and poverty and build up a prosperous and happy socialist society". It further states: "All nationalities of our country are united in one family of free and equal nations. This unity of China's nationalities will continue to gain in strength, founded as it is on ever-growing friendship and mutual aid among themselves, and on the struggle against imperialism, against public enemies of the people within the nationalities, and against both dominant-nation chauvinism and local nationalism. In the cause of economic and cultural development, the state will concern itself with the needs of the different nationalities, and, in the matter of socialist transformation, pay full attention to the special characteristics in the development of each". The preamble declares China's "indestructible friendship with the Soviet Union and People's Democracies", and her policy "to strive for the noble cause of world peace and the progress of humanity".

Chapter One, consisting of twenty articles, lays down General Principles. The First Article declares the People's Republic of China as "a people's democratic state led by the working class and based on the alliance of workers and peasants". China contains a very large number of urban and rural individual workers engaged in handicraft or non-agricultural labour. They earn their livelihood by their own labour. Mark Twain had once remarked: "A disorderly Chinaman is rare, and a lazy one does not exist". But the individual labourers who produce exquisite articles of art and craft have not been well organized and Article I aims at effecting a close alliance between these and the peasants who form the largest percentage of the country's population. This alliance, it is hoped, would consolidate and strengthen the working-class leadership. All power in the Republic belongs to the people and is exercised through the National People's Congress and the local people's congresses, and these and other organs of state practise "democratic centralism" (Art. 2). The People's Republic of China is a multi-national single state; all nationalities are equal and discrimination against, or oppression of, any nationality

is prohibited; all nationalities have freedom to use and foster the growth of their spoken and written languages; regional autonomy is allowed in areas with compact national minorities; the national autonomous areas are inalienable parts of the People's Republic (Art. 3).

Article 5 enumerates the various forms of ownership of means of production, namely, state ownership by the whole people; cooperative or collective ownership by the working masses; ownership by individual working people; and capitalist ownership. The state protects the right of peasants to own land and other means of production (Art. 8); it protects the right of handicraftsmen and other non-agricultural individual working people to own means of production (Art. 9). All these are, however, to be laid down by law. By Article 10, the state protects the right of capitalists to own means of production; the policy of the state in this regard is to use, restrict and ultimately transform them into the socialist pattern. Citizens enjoy the right to own lawfully-earned incomes, savings, houses and other means of life, as also the right to inherit property according to law (Arts. 11 and 12).

National People's Congress as the Legislature.—Chapter Two consisting of Articles 21 to 84 describes the structure of the state. The highest organ of state authority is the National People's Congress which is the sole legislative authority for the country; it is composed of deputies elected by provinces, autonomous regions, municipalities under the direct central authority, and the armed forces and the Chinese residents abroad; it is elected for a four-year term; it is convened once a year by its Standing Committee, but may be convened also whenever that Committee or one-fifth of the deputies so propose. It elects a presidium to conduct its proceedings.

The functions and powers of the National People's Congress are:

(1) to amend the Constitution;

(2) to enact laws;

(3) to supervise the enforcement of the Constitution;

(4) to elect the Chairman and the Vice-Chairman of the People's Republic of China;

(5) to decide on the choice of Premier of the State Council upon recommendation by the Chairman of the People's Republic of China, and the component members of the State Council upon recommendation by the Premier;

(6) to decide on the choice of the Vice-Chairman and other members of the Council of National Defence upon recommendation by the

Chairman of the People's Republic of China;

(7) to elect the President of the Supreme People's Court;

(8) to elect the Chief Procurator of the Supreme People's Procuratorate;

(9) to decide on the national economic plans;

(10) to examine and approve the state budget and the financial report;

(11) to ratify the status and boundaries of provinces, autonomous regions, and municipalities directly under the central authority;

(12) to decide on general amnesties;

(13) to decide on questions of war and peace; and

(14) to exercise such other functions as the National People's Congress considers necessary.

The National People's Congress can remove from office:

(1) the Chairman and Vice-Chairman of the People's Republic of China;

(2) the Premier and Vice-Premiers, Ministers, Heads of Commissions and the Secretary-General of the State Council;

(3) the Vice-Chairmen and other members of the Council of National Defence;

(4) the President of the Supreme People's Court; and

(5) the Chief Procurator of the Supreme People's Procuratorate.

All laws and other bills require a simple majority of all the deputies to the National People's Congress for enactment. But amendments to the Constitution require a two-thirds majority vote of all deputies.

The Constitution lays down the rights and powers of the deputies to the National People's Congress thus:

(a) they have the right to address questions to the State Council, or to the Ministries and Commissions of the State Council;

(b) they may not be arrested or placed on trial without the consent of the National People's Congress or, during its recess, of its Standing Committee;

(c) they are subject to the supervision of the units which elect them and can be recalled by them according to the procedure prescribed by law.

The Standing Committee.—The Standing Committee of the National People's Congress is a permanently acting body of the National People's Congress. It consists of the Chairman, Vice-Chairman, the Secretary-General and other members, all of them elected by the Congress. It is responsible to the Congress which has

power to recall the members; it reports to the Congress.

The Standing Committee exercises the following functions and powers:

(1) to conduct the election of deputies to the National People's Congress;

(2) to convene the National People's Congress;

(3) to interpret laws;

(4) to adopt decrees;

(5) to supervise the work of the State Council, the Supreme People's Court and the Supreme Peoples' Procuratorate;

(6) to annul decisions and orders of the State Council which contravene the Constitution, laws or decrees;

(7) to revise or annul appropriate decisions issued by the government authorities of provinces, autonomous regions, and municipalities directly under the central authority;

(8) to decide on the appointment or removal of any Vice-Premier, Head of Commission or the Secretary-General of the State Council when the National People's Congress is not in session;

(9) to appoint or remove the Vice-Presidents, judges, and other members of the judicial Committee of the Supreme People's Court;

(10) to appoint or remove the Deputy Chief Procurators, procurators, and other members of the Procuratoral Committee of the Procuratorate;

(11) to decide on the appointment or recall of plenipotentiary representatives to foreign states;

(12) to decide on the ratification or abrogation of treaties concluded with foreign states;

(13) to institute military, diplomatic and other special titles and ranks;

(14) to institute and decide on the award of state orders, medals and titles of honour;

(15) to decide on the granting of pardons;

(16) to decide, when the National People's Congress is not in session, on the proclamation of a state of war in the event of armed attack on the country or in fulfilment of international treaty obligations concerning common defence against aggression;

(17) to decide on general or partial mobilization;

(18) to decide on the enforcement of martial law throughout the country or in certain areas; and

(19) to exercise such other functions and powers as are vested in it by

the National People's Congress.

The Standing Committee continues to exercise its functions and powers till its successor is appointed by the succeeding National People's Congress.

All other Committees, like the Nationalities Committee, the Bills Committee, the Budget Committee, and the Credentials Committee, established by the National People's Congress work under the direction of the Standing Committee when the National People's Congress is not in session.

The Executive in the People's Republic.—The executive organ of the Republic consists of the Chairman of the People's Republic of China, who is the head of State, and the State Council which is akin to the cabinet in a democratic state.

The Chairman of the People's Republic of China is elected by the National People's Congress for a four-year term; any citizen of the Republic who has the right to vote and stand for election to the Congress and has reached the age of thirty-five years is eligible for election for the office. There is also a Vice-Chairman; the Constitution requires the same qualifications and prescribes the same method of election and term of office for him as for the Chairman. The Vice-Chairman assists the Chairman in the discharge of the latter's duties and also acts as Chairman when the President is incapacitated for a prolonged period by reason of health; the Vice-Chairman succeeds to the office of Chairman whenever it falls vacant.

The Chairman of the People's Republic of China promulgates laws and decrees in pursuance to the decisions of the Congress and its Standing Committee. He appoints and removes the Premier, the Vice-Premiers, Ministers, Heads of Commissions and the Secretary-General of the State Council; appoints or removes the Vice-Chairmen and other members of the Council of National Defence; confer state orders, medals and titles of honour; proclaims general amnesties and grants pardons; proclaims martial law; proclaims a state of war; and orders mobilization. He is Chairman of the Council of National Defence and commands the armed forces of the country. He represents the People's Republic of China in its relations with foreign states, receives foreign diplomatic representatives and, in pursuance of the Standing Committee of the Congress he appoints and recalls plenipotentiary representatives to foreign states and ratifies treaties concluded with foreign states. Whenever necessary, he convenes a Supreme State Conference (consisting of the Vice-Chairman of the People's Republic

of China, the Chairman of the Standing Committee of the National People's Congress, the Premier of the State Council and other persons concerned) and acts as its Chairman. He submits the views of this Supreme Conference on important matters of state to the National People's Congress, its Standing Committee, the State Council or other bodies concerned for their consideration and decision. He may entrust the Vice-Chairman of the People's Republic to exercise such part of his own functions and powers as he may like.

The State Council.—The State Council is the body which may be likened to the cabinet or the real executive branch of the government of any democratic country: it is the Central People's Government and as such is the highest executive and administrative organ in the state. It is composed of the Premier, the Vice-Premiers, the Ministers, the Heads of Commissions, and the Secretary-General. Its organization is determined by law. The Premier directs the work of the State Council and presides over its meetings. The Vice-Premiers assist the Premier in his work. The Ministers and Heads of Commissions direct the work of their respective departments and issue orders and directives in accordance with laws and decrees and decisions and orders of the State Council, respecting their particular departments. The State Council is responsible to the National People's Congress and reports to it; in case of recess of the Congress it is responsible to the Standing Committee.

Article 49 of the Constitution lays down the following functions and powers of the State Council:

(1) to formulate administrative measures, issue decisions and orders and verify their execution, in accordance with the Constitution, laws and decrees;

(2) to submit bills to the National People's Congress or its Standing Committee;

(3) to coordinate and lead the work of Ministries and Commissions;

(4) to coordinate and lead the work of local administrative organs of state throughout the country;

(5) to revise or annul appropriate orders and directives issued by Ministers or Heads of Commissions;

(6) to revise or annul appropriate decisions and orders issued by local administrative organs of state;

(7) to put into effect the national economic plans and provisions of state budget;

(8) to control foreign and domestic trade;

(9) to direct cultural, educational and public health work;
(10) to administer affairs concerning the nationalities;
(11) to administer affairs concerning Chinese resident abroad;
(12) to protect the interests of the state, to maintain public order and to safeguard the rights of citizens;
(13) to direct the conduct of foreign affairs;
(14) to guide the building up of defence forces;
(15) to ratify the status and boundaries of autonomous *chou*, counties, autonomous counties, and municipalities;
(16) to appoint or remove administrative personnel according to provisions of law; and
(17) to exercise such other functions and powers as are vested in it by the National People's Congress or its Standing Committee.

These functions and powers of the State Council are, taken together and their import assessed in the totality of the governmental set up, are so great that "centralism" is undoubtedly the key-note of the Chinese People's Republic; whether this centralism as qualified by the word "democratic" in theory can be really democratic in practice must depend largely upon the degree of political consciousness awakened in the masses and the realism of the freedom and rights of the individual citizens theoretically granted to them.

Administrative Areas and their Administration

For administrative purposes the People's Republic of China is divided into provinces, autonomous regions and municipalities directly under central control. The Provinces and autonomous regions are subdivided into autonomous *chou*, counties, autonomous counties, and municipalities. The Counties and autonomous counties are further divided into *hsiang*, nationality *hsiang*, and towns. Municipalities directly under central authority and other large municipalities are divided into districts. Autonomous *chou* are divided into counties, autonomous counties and municipalities. Autonomous regions, autonomous *chou* and autonomous counties are all national autonomous areas.

For purposes of administration of the areas mentioned above, people's congresses and people's councils (representing the legislative and executive organs) are established in provinces, municipalities directly under central authority, counties, municipalities, municipal districts, *hsiang*, nationality *hsiang*, and towns. Organs of self-govern-

ment are established in autonomous regions, autonomous *chou* and autonomous counties.

The people of each administrative area elect their people's congresses (each at its own level) according to manner prescribed by law. The term of each provincial people's congress is four years, and of each at the lower levels is two years.

"The local people's congresses at every level ensure the observance and execution of laws and decrees in their respective administrative areas; draw up plans for local economic and cultural development and for public works; examine and approve local budgets and financial reports; protect public property; maintain public order; safeguard the rights of citizens and the equal rights of national minorities". They elect and recall members of the people's councils at corresponding levels. The people's congresses at county level and above elect and have power to recall the presidents of people's courts at corresponding levels.

The various local people's congresses adopt and issue decisions within the limits of authority prescribed by law; they have power to revise and annul appropriate decisions and orders issued by the people's councils at corresponding levels; those at nationality *hsiang* level also take specific measures appropriate to the characteristics of the nationalities concerned. The people's congresses at the lower levels, that is, municipality, district, *hsiang* and towns, are subject to supervision by the respective electorates:

There are people's councils, that is, the people's governments, exercising executive organs authority at corresponding levels in the various provinces and other administrative areas mentioned above. The term of each of them is the same as that of the congress at the corresponding level. The organization of these councils is determined by law. They carry out the decisions of the people's congresses at corresponding levels to which they are responsible. But all these people's councils are subordinate to and under the co-ordinating direction of the State Council. All this indicates that the Constitution takes special care to unify the different parts of the multi-national and multi-linguistic vast country China is; there is care taken not to give any of the provinces or administrative areas any semblance of power or authority given to the part-states in federal or quasi-federal states. The People's Republic of China is a unified state and attempts at maintaining of full control over the various parts of the country through what the constitution of China calls "democratic centralism".

The languages and local customs of the various nationalities are not interfered with but no fissiparous tendencies are allowed to raise their head so as to encourage localism at the cost of Nationalism as conceived in one of the three principles of Sun-yat Sen.

The Judicial System in the People's Republic

The set up of the judicial system of the People's Republic of China is described in section VI of Chapter Two of the Constitution. The aim of the system was stated in the Report before the First People's Congress to be to provide for cheaper and speedy justice to the citizens.

There are three categories of courts; the Supreme People's Court, local people's courts and special people's courts. Each of them has a president at its head, whose term of office is four years. The organization of the people's courts is determined by law; they are independent in administering justice, subject only to law; their work is supervised by the Supreme People's Court which also supervises the work of special people's courts. The principle of higher people's courts supervising the work of those at lower levels is followed.

Cases in the people's courts are heard in the public unless otherwise provided for by law; people's assessors are associated with the people's courts. Citizens of different nationalities are allowed the use of their spoken and written languages in court proceedings; wherever necessary, interpreters for any party are provided. Besides the conduct of hearings in the languages of compact linguistic minorities, the judgments are also delivered in the languages of the localities concerned.

The elective judges, the institution of people's courts at different levels, the provision of supervision over courts at lower levels by those at the higher levels, the provision of the system of assessors, and the use of languages of different minorities in judicial proceedings, are the many steps taken to ensure speedy and cheaper justice.

The Supreme People's Procuratorate exercises procuratorial authority throughout the country over all departments of the State Council, all local organs of state, persons and citizens, to ensure due observance of laws. There are local people's procuratorates at different levels of administrative units working under the supervision, ultimately, of the Supreme People's Procuratorate; which is ultimately responsible to the National People's Congress, and during its recess, to its Standing Committee.

Fundamental Rights and Duties of Citizens

Contrary to the practice followed in other constitutions, the Constitution of the People's Republic of China states the Fundamental Rights and Duties of the Citizens not in the beginning, but after the description of the administrative structure. Chapter Three contains clauses 85-103 which state these rights and duties. Citizens of China are equal before the law; those citizens who have reached the age of eighteen have the right to vote and stand for election irrespective of their nationality, race, sex, occupation, social origin, religious belief, education, property status, or length of residence. Insane persons and those deprived by law of the right to vote and stand for election are disqualified from the enjoyment of this general right.

The other rights guaranteed by the Constitution are:

(1) freedom of speech, freedom of press, of assembly, of association, of procession and demonstrations;

(2) freedom of religious belief;

(3) freedom of person, no one to be arrested except by decision of a people's court or with the sanction of a people's procuratorate;

(4) inviolability of home, privacy of correspondence, freedom of residence and of change of residence;

(5) right to work for the enjoyment of which the state creates, through planned economy, more employment and better conditions of work and wages;

(6) right to rest and leisure, by the prescription of working hours and holidays for workers and employees, and better facilities for building up of health;

(7) right to material assistance in old age and in cases of illness or disability, by providing for social insurance, social assistance and public health services;

(8) right to education, the state establishing various types of schools and other cultural and educational institutions;

(9) freedom to engage in scientific research, literary and artistic creation and other cultural pursuits, the state providing facilities for the purpose and necessary encouragement;

(10) right to bring complaints against any person working in organs of state for transgression of law or neglect of duty, provision for payment of compensation in case of loss suffered by citizens by reason of infringement by state officials.

The state protects the rights of the Chinese nationals resident

abroad; it grants asylums to any foreign national persecuted for supporting a just cause, for taking part in the peace movement or for engaging in scientific activity.

The Constitution imposes certain duties on the citizens. They have to abide by the Constitution and law, uphold discipline at work, to keep public order and respect social ethics, to treat public property as sacred and inviolable, to pay taxes, to defend the homeland and perform military service according to law.

The rigorous enforcement of the prescribed duties of the citizens has been insisted upon by the state. The rights and duties thus stated and the nature of the central control have led to country-wide regimentation.

In order to establish a socialist society and achieve the objectives set forth, the government has embarked upon Five-Year Plans to increase the prosperity of the people. Co-operative farming, the establishment of co-operatives, encouragement to cottage industries of various descriptions, the production of electric energy, improvement of agricultural methods, production of steel through state plants and blast furnaces of individual citizens in different areas, are some of the many undertakings through which the living standard of the people is expected to be raised. This will be in fulfilment of the other principle of Sun-yat Sen. By the expulsion of foreigners who had obtained rights of extra-territoriality, and the consequent abolition of "concessions", China has ended colonialism; by abolition of feudalism and the recognition of the rights of the peasants over land fulfilment of the third principle of the father of Chinese nationalism has been achieved. The Chinese Communists claim that they are the true followers of Sun-yat Sen who, in the circumstances then prevailing, had started the real and honest movement for the liberation of China and her rise as a great independent nation in Asia.

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APPENDIX A

THE CONSTITUTION OF THE FRENCH REPUBLIC[1]

PREAMBLE. On the morrow of the victory of the free peoples over the regimes that attempted to enslave and degrade the human person, the French people proclaims again that every human being, without distinction of race, religion or belief, possesses inalienable and sacred rights. It solemnly reaffirms the freedoms of man and of the citizen consecrated by the declaration of rights of 1789 and the fundamental principles recognized by the laws of the Republic.

It proclaims, moreover, as particulary necessary in our time, the following political, economic and social principles.

The law guarantees to women in all domains equal rights with those of man.

Anyone persecuted because of his acts in favour of liberty has the right of asylum on the territories of the Republic.

Every one has the duty to work and the right to obtain employment. No one may suffer in his work or his employment by reason of his origins, his opinions, or his beliefs.

Every man may defend his rights and interests by trade-union action and may join the union of his choice.

The right to strike is exercised within the framework of the laws that govern it.

Every worker, through his delegates, participates in collective bargaining on working conditions as well as in the management of business.

All property and all business whose exploitation has acquired the characteristics of a national public service or a monopoly in fact should become the property of the community.

The nation assures to the individual and to the family the conditions necessary to their development.

It guarantees to all, and notably to the child, to the mother and

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[1] From the *New York Times*, September 21, 1946. Adopted by a popular referendum October 13, 1946, by a vote of approximately 9,200,000 to 7,790,000, it has since served as the constitutional basis of French government, but may be subject to amendment during the course of the next few years.

to aged workers, protection for health, material security, rest and leisure.

Every human being who, by reason of his age, physical or mental condition or economic situation, finds himself incapable of work has the right to obtain from the community the means of decent living.

The nation proclaims the solidarity and equality of all French citizens with regard to the burden resulting from national calamities.

The nation guarantees equal access of the child and the adult to instruction, to vocational training and to culture. The organization of free and secular public education at all stages is a duty of the state.

The French Republic, faithful to its traditions, conforms to the rules of international law. It will undertake no war with a view to conquest and will never employ its forces against the liberty of any people.

On condition of reciprocity, France consents to the limitation of sovereignty necessary to the organization and defence of peace.

France forms with the peoples overseas a union founded on the equality of rights and duties without distinction of race or religion.

The French Union is composed of nations and peoples placing in common, or coordinating, their resources and their efforts to develop their civilization, to increase their well-being and to assure their security.

Faithful to her traditional mission, France proposes to guide the people for whom she has assumed responsibility toward freedom to govern themselves and democratically to manage their own affairs; putting aside all systems of colonization founded on arbitrary power; she guarantees to all access to public office and the exercise of the individual or collective rights and liberties proclaimed or confirmed above.

Institutions Of The Republic

Title I. Sovereignty.

Article I. France is a republic—indivisible, secular, democratic and social.

Article II. The national emblem is the tri-colour flag—blue, white and red—in three vertical bands of equal dimensions.

The national hymn is the "Marseillaise."

The motto of the republic is: "Liberty, Equality, Fraternity."

Its principle is: government of the people, for the people and by the people.

Article III. The national sovereignty belongs to the French people.

No section of the people nor any individual may assume its exercise.

The people in constitutional matters act by the vote of their representatives and by the referendum.

In all other matters they exercise sovereignty through their deputies in the National Assembly, elected by universal, equal, direct and secret suffrage.

Article IV. Under conditions determined by the law, all French nationals who are majors of both sexes enjoying their civil and political rights are voters.

Title 2. The Parliament

Article V. The Parliament is composed of the National Assembly and the Council of the Republic.

Article VI. The duration of the powers of each Assembly, its mode of election, the conditions of eligibility, the basis of ineligibilities and incompatibilities are fixed by the law.

However, the two chambers are elected on a territorial basis—the National Assembly by universal direct suffrage, the Council of the Republic by the communal, departmental units, universal indirect suffrage.

The Council of the Republic is renewable, one-half at a time.

Nevertheless, the National Assembly may itself elect by proportional representation councillors whose number shall not exceed one-sixth of the total number of members of the Council of the Republic.

The number of members of the Council of the Republic may not be less than one-third or more than half the number of members of the National Assembly.

Article VII. War may not be declared without a vote of the National Assembly and concurrence in advance by the Council of the Republic.

Article VIII. Each of the two Chambers is the judge of the eligibility of its members and of the regularity of their election; it alone may receive their resignations.

Article IX. The National Assembly convenes by right in annual

session on the second Tuesday of January.

The total duration of interruptions of the session may not exceed four months. Any adjournments of sittings of more than ten days are considered as interruptions.

The Council of the Republic sits at the same time as the National Assembly.

Article X. The sittings of the two Chambers are public. Reports of debates in extenso, as well as the parliamentary documents, are published in the Official Journal. Each of the two Chambers may convene as a secret committee.

Article XI. Each of the two Chambers elects its secretariat each year at the beginning of the session in accordance with the proportionate representation of the party groups.

When the two Chambers meet together to elect the President of the Republic, their secretariat is that of the National Assembly.

Article XII. When the National Assembly is not sitting, its secretariat, checking on the actions of the Cabinet, may convoke the Parliament; it must do this on the request of one-third of the deputies or on that of the Premier.

Article XIII. The National Assembly alone may vote the laws. It may not delegate this right.

Article XIV. The Premier and members of Parliament have the initiative in legislation.

Bills and Proposed laws formulated by the members of the National Assembly are tabled with its secretariat.

The proposals framed by the members of the Council of the Republic are tabled with its secretariat and transmitted without rebate to the secretariat of the National Assembly. These may not be received when they would have as a consequence the reduction of receipts or the creation of new outlays.

Article XV. The National Assembly studies the projects and proposals submitted to it in its committees, of which it fixes the number, composition and competence.

Article XVI. The budget proposal is submitted to the National Assembly.

This law must include only strictly financial dispositions.

An organic law will regulate the method of presentation of the budget.

Article XVII. The Deputies of the National Assembly possess the initiative in expenditures,

However, no proposal for increasing expenditures or creating new expenditures may be presented during the discussion of the budget or of prospective or supplementary credits.

Article XVIII. The National Assembly supervises the accounts of the nation.

In this it is assisted by an accounting court. The National Assembly may entrust to the accounting court any enquiries or studies connected with public revenues and expenses or the management of the treasury.

Article XIX. Amnesty may be accorded only by law.

Article XX. The Council of the Republic examines proposed laws voted on first reading by the National Assembly.

It gives its opinion at the latest within two months after a measure is sent to it by the National Assembly.

When a budget law is involved, this delay is reduced, if desirable, to such an extent as not to exceed the time expended by the National Assembly in its examination and vote. When the National Assembly has decided on an urgent procedure, the Council of the Republic gives its advice in the same time as that provided for discussion in the National Assembly in settlement of the matter. The delays provided in the present article are suspended during interruptions of the session. They may be prolonged by a decision of the National Assembly.

If the advice of the Council of the Republic conforms, or if it has not been given within the period provided in the preceding part, the law is promulgated as voted by the National Assembly.

If its advice does not conform, the National Assembly examines the project or proposal for a law in a second reading. It determines definitively and in sovereign right the amendments submitted by the Council of the Republic, accepting or rejecting them in whole or in part. In case of total or partial rejection of these amendments, the vote in the second reading takes place by public ballot by an absolute majority of the members composing the National Assembly, when the vote on the whole has been expressed by the Council of the Republic under the same conditions.

Article XXI. No member of Parliament may be prosecuted, arrested, detained or judged on the basis of opinions or votes expressed by him in the exercise of his functions.

Article XXII. No member of Parliament may, during his term of office, be prosecuted or arrested for a criminal offence except with

the authorization of the Chamber to which he belongs, except in case of a major crime. The detention or prosecution of a member of Parliament is suspended if the Chamber to which he belongs requests it.

Article XXIII. Members of Parliament receive compensation fixed in relation to A grade of civil servants.

Article XXIV. No one may belong at the same time to the National Assembly and the Council of the Republic. Ministers of Parliament may not be members of the Economic Council or of the Assembly of the French Union.

Title 3. The Economic Council

Article XXV. An Economic Council whose status is fixed by law examines and advises on proposed laws in its domain. These proposed laws are submitted to it by the National Assembly before the Assembly discusses them.

The Economic Council may also be consulted by the Cabinet. It must be so consulted on the adoption of a national economic plan for the full employment of men and the rational use of material resources.

Title 4. Diplomatic Treaties

Article XXVI. Diplomatic treaties duly ratified and published have the force of law, even when contrary to domestic French laws, requiring for their application no legislative acts beyond those necessary to insure their ratification.

Article XXVII. Treaties relative to international organisation, peace treaties, commercial treaties, treaties that involve state finances, those relating to the status of persons and to the property rights of French citizens abroad and those that modify French internal laws as well as those that involve the cession, exchange or addition of territory do not become definitive until after having been ratified by a law.

No cession, no exchange and no addition of territory is valid without the consent of the interested populations.

Article XXVIII. Diplomatic treaties duly ratified and published having an authority superior to that of internal laws, their provisions may not be abrogated, modified or suspended without a previous regular denunciation notified through diplomatic channel. When any one of the treaties mentioned in Article XXVII is involved, except commercial treaties, the denunciation must be authorised by the National Assembly.

Title 5. The President of the Republic

Article XXIX. The President of the republic is selected by the Parliament. He is elected for seven years. He is eligible for re-election only once.

Article XXX. The President of the Republic appoints in the Cabinet the Councillors of State, the Grand Chancellor of the 'Legion of Honor,' Ambassadors and envoys extraordinary, members of the Superior Council and of the Committee of National Defence, rectors of universities, prefects, chiefs of central administration, general officers and representatives of the government in overseas territories.

Article XXXI. The President of the Republic is kept informed of international negotiations.

The President of the Republic accredits Ambassadors and envoys extraordinary to foreign powers; foreign Ambassadors and envoys extraordinary accredited to him.

Article XXXII. The President of the Republic presides over the Cabinet. He causes to be established and has custody of the reports of the sittings.

Article XXXIII. The President of the Republic presides with the same attributes over the Superior Council and the Committee of National Defence and assumes the title of chief of the armies.

Article XXXIV. The President of the Republic presides over the Superior Council of the magistracy.

Article XXXV. The President of the Republic exercises the right of pardon in the Superior Council of the Magistracy.

Article XXXVI. The President of the Republic promulgates the laws within ten days after the transmission of a law definitively adopted to the Government. This delay is reduced to five days if urgency is declared by the National Assembly.

Within the period fixed for promulgation the President of the Republic may, in a message, ask the two Chambers for a new deliberation, which may not be refused.

In default of promulgation by the President of the Republic within the limits fixed by the present Constitution, it shall be accomplished by the President of the National Assembly.

Article XXXVII. The President of the Republic communicates with Parliament by messages addressed to the National Assembly.

Article XXXVIII. Each official action of the President of the Republic must be countersigned by the Premier and by a Minister.

Article XXXIX. Fifteen days atleast, and thirty days atmost before the expiration of the powers of the President of the Republic, Parlia-

ment elects a new President.

Article XL. If in the application of the preceding article the election takes place when the National Assembly is dissolved in conformity with Article LI, the powers of the President in office are extended until the election of a new President. Parliament will elect this new President within ten days after the election of a new National Assembly.

Article XLI. In case of disability noted by a vote of Parliament or in case of vacancy through death, resignation or any other cause, the President of the National Assembly provisionally assumes interim functions of the President of the Republic. He will be replaced by a Vice-President.

A new President of the Republic is elected within ten days, except under the conditions mentioned in the preceding article.

Article XLII. The President of the Republic may be tried only in case of high treason.

He may be placed under accusation by the National Assembly and arraigned before the High Court of Justice under the conditions provided in the Article LVII below.

Article XLIII. The function of the President of the Republic is incompatible with any other function.

Article XLIV. Members of families having reigned in France are ineligible for the Presidency of the Republic.

Title 6. The Cabinet

Article XLV. At the opening of each Legislature, the President of the Republic, after the customary consultations, designates the Premier.

The latter may not constitute his Cabinet until invested with the confidence of the Assembly expressed by a public vote of an absolute majority of the Deputies, except if *force majeure* prevents the meeting of the National Assembly.

The same procedure is followed during the sitting of the Legislature in case of vacancy through death, resignation or any other cause, with the exception cited in article LII below.

No ministerial crisis occurring within fifteen days of the nomination of the Ministers will count for the application of Article LI.

Article XLVI. The Premier and the Ministers chosen by him are named by a decree of the President of the Republic.

Article XLVII. The Premier assures the execution of the laws. He appoints all civil and military officials except those referred to in

Articles XXX, XLVI and LXXXIV.

The Premier assures the high direction of the armed forces and coordinates the putting into operation of the national defence.

The acts of the Premier mentioned in the present article are countersigned by the interested Ministers.

Article XLVIII. The Ministers are collectively responsible to the National Assembly for the general policy of the Cabinet and individually for their personal actions.

They are not responsible to the Council of the Republic.

Article XLIX. A question of confidence may not be placed except after deliberation by the Cabinet; it may not be placed except by the Premier.

The vote on a question of confidence may not take place until a whole day after it has been placed before the Assembly. It takes place by public vote.

Confidence may not be refused to the Cabinet except by an absolute majority of the Deputies of the Assembly.

This refusal entails the collective resignation of the Cabinet.

Article L. The voting of a motion of censure by the National Assembly entails the collective resignation of the Cabinet.

This vote cannot occur until a full day after the deposit of the motion. It takes place by public ballot.

The motion of censure may not be adopted except by an absolute majority of the Deputies of the Assembly.

Article LI. If in the same period of eighteen months two Ministerial crises occur under the conditions mentioned in Articles XLIX and L, the dissolution of the National Assembly may be decided by the Cabinet after advice of the president of the Assembly. The dissolution shall be pronounced in conformity with this decision by a decree of the President of the Republic.

The dispositions of the preceding paragraph are applicable only after the expiration of the first eighteen months of the legislature.

Article LII. In case of dissolution, the Cabinet, except the Premier and the Minister of the Interior, remains in office for the dispatch of current affairs.

The President of the Republic designates the president of the National Assembly as Premier. The latter designates a new Minister of the Interior in agreement with the secretariat of the National Assembly. He designates as Ministers of State members of the groups not represented in the Government.

General elections take place atleast twenty days and not more than thirty days after the dissolution.

The National Assembly convenes by right on the third Thursday after its election.

Article LIII. The Ministers have access to the two Chambers and their committees. They must be heard when they request it.

They may have themselves been invited to participate in discussions before the Chambers by committee members designated by decree.

Article LIV. The Premier may delegate his powers to a Minister.

Article LV. In case of vacancy through death or for any other reason, the Cabinet designates one of its members to exercise provisionally the functions of Premier.

Title 7. The Penal Responsibility of Ministers

Article LVI. Ministers are responsible penally for crimes and offences committed in the exercise of their functions.

Article LVII. Ministers may be placed under accusation by the National Assembly and ordered before the High Court of Justice.

The National Assembly decides by secret ballot and in accordance with an absolute majority of the members of which it is composed, except those who are participating in the prosecution in the inquiry or in judgment.

Article LVIII. The High Court of Justice is elected by the National Assembly at the opening of each legislature.

Article LIX. The organization of the High Court of Justice and its procedure are determined by a special law.

Title 8. The French Union

Section 1. Principles. Article LX. The French Union is formed on the one hand by the French Republic, which includes metropolitan France and the departments and territories overseas; and on the other hand by the territories or associated states.

Article LXI. The situation of the associated states in the French Union depends for each of them on the act that defines its relations with France.

Article LXII. The members of the French Union place in common their entire means for guaranteeing the whole of the Union. The Government of the Republic assumes the coordination of these means and the direction of policy suitable for preparing and assuming this defence.

Section 2. Organisation. Article LXIII. The central organs of the French Union are: The Presidency, the High Council and the

Assembly.

Article LXIV. The President of the Republic is the President of the French Union, whose permanent interests he represents.

Article LXV. The High Council of the French Union is composed, under the presidency of the President of the Union, of a delegation of the French Government and the representation that each of the associated States has the power to accredit to the President of the Union.

It has the function of assisting the Government in the general conduct of the Union.

Article LXVI. The Assembly of the French Union is composed half of members representing metropolitan France and half of members representing the overseas departments and territories and the associated States.

An organic law shall determine the conditions under which the different parts of the population will be represented.

Article LXVII. The members of the Assembly of the Union are elected by territorial assemblies with respect to overseas departments and territories; they are elected in metropolitan France to the number of two-thirds by members of the National Assembly representing the home country and to the number of one-third by members of the Council of the Republic representing the home country.

Article LXVIII. The associated States may designate delegates to the Union Assembly within the limits and conditions fixed by an internal law and act in each State.

Article LXIX. The President of the French Union convokes the Assembly of the French Union and closes its sessions. He must convoke it on demand of half its members.

The Assembly of the French Union may not sit during interruptions of sessions of Parliament.

Article LXX. The rules of Articles VIII, X, XXI, XXII and XXIII are applicable to the French Union under the same conditions as to the Council of the Republic.

Article LXXI. The Assembly of the French Union receives projects or proposals that are submitted for its opinion by the National Assembly or the Government of the French Republic or the governments of associated States.

The Assembly is qualified to pronounce on resolutions submitted to it by one of its members and, if they are taken into consideration, to instruct its secretariat to transmit them to the National Assembly. It

may make proposals to the French Government and to the High Council of the French Union.

To be admissible, the resolutions referred to in the preceding paragraph must relate to legislation concerning overseas territories.

Article LXXII. In the overseas territories the legislative power belongs to Parliament as concerns criminal legislation, the regime of public liberties and political and administrative organization.

In all other matters French law is applicable in the overseas territories only by special order or if it has been extended by decree to the overseas territories after consultation with the Assembly of the Union.

Moreover, as an exception to Article XIII, special dispositions may be applied by edict to each territory by the President of the Republic in the Cabinet with the advice of the Assembly of the Union.

Section 3. Departments and Overseas Territories.

Article LXXIII. The Legislative regime of the overseas departments is the same as that of metropolitan departments save for exceptions fixed by law.

Article LXXIV. The overseas territories are endowed with special status taking into account their special interests in the general interests of the Republic.

This status and the interior organization of each overseas territory or each group of territories are fixed by law after the advice of the Assembly of the French Union and consultation with the territorial assemblies.

Article LXXV. The respective status of members of the Republic and of the French Union are susceptible to evolution.

Modifications of the status and passage from one category to another within the framework set by Article LX may result only from a law voted by Parliament after consultation with the territorial assemblies and the Assembly of the Union.

Article LXXVI. The representative of the Government in each territory or group of territories is the depository of the powers of the Republic. He is the chief of the administration of the territory.

He is responsible for his acts to the Government.

Article LXXVII. In each territory an elected assembly is instituted. The electoral regime and the composition and competence of the Assembly are fixed by law.

Article LXXVIII. In groups of territories the management of

common interests is confided to an Assembly composed of members elected by the territorial Assemblies. Its composition and powers are fixed by law.

Article LXXIX. The overseas territories elect representatives to the National Assembly and the Council of the Republic under conditions determined by law.

Article LXXX. All natives of overseas territories have the status of citizens with the same standing as French citizens of metropolitan France or of overseas territories. Special laws will establish the conditions under which they will exercise their rights of citizenship.

Article LXXXI. All French natives and natives of the French Union are citizens of the French Union, which assures them the enjoyment of the rights and liberties guaranteed by the preamble of the present Constitution.

Article LXXXII. Those citizens who have not French civil status will preserve their personal status as long as they have not renounced it. This status cannot in any case constitute a motive for refusing or limiting the rights and liberties pertaining to the status of French citizen.

Title 9. The Superior Council of the Magistracy.

Article LXXXIII. The Superior Council of the Magistracy is composed of fourteen members: the President of the Republic, presiding; the Keeper of the Seals or Minister of Justice, vice-president; six persons elected for six years by the National Assembly by a two-thirds majority and chosen outside its membership, and six alternates elected under the same conditions; six persons designated as follows: four magistrates elected for six years each, representing a category of magistrates under conditions prescribed by law, and four alternates elected under the same conditions; two members designated for six years by the President of the Republic outside Parliament and the magistracy but from the judiciary professions, and two alternates designated under the same conditions.

The decisions of the Superior Council of the magistracy are taken by a majority. In case of a tie vote, that of the President deciding.

Article LXXXIV. The President of the Republic appoints magistrates from a list submitted by the Superior Council of the Magistracy, except those of the public prosecutor's office.

The Superior Council of the Magistracy assures, in conformity with the law, the discipline of its magistrates, their independence, and the administration of judiciary tribunals. The presiding magistrates are

not removable.

Title 10. Local Government Units

Article LXXXV. The French Republic, one and indivisible, recognizes the existence of local government units. These units are communes, *departments* and overseas territories.

Article LXXXVI. The framework, the scope and the eventual regrouping of communes, departments and overseas territories are fixed by law.

Article LXXXVII. Local government units freely administer themselves through Councils elected by universal suffrage. The execution of the decisions of these Councils is assured by their Mayors or their Presidents.

Article LXXXVIII. The coordination of the activities of state officials, the representation of the national interests and the administrative supervision of local government units are assured within the departments by the delegates of the Government designated by the Cabinet.

Article LXXXIX. Organic laws will extend departmental and municipal liberties; they may provide for certain large town structures and manners of functioning that differ from those of small communes and that entail special dispensations for certain departments; they will determine the conditions of application of Articles LXXXV-LXXXVIII above.

Laws will likewise determine the conditions under which local services of central administration will function in order to bring the administration closer to the people.

Title 11. The Revision of the Constitution.

Article XC. Revision takes place in the following manner: Revision is to be decided by a resolution adopted by an absolute majority of the members composing the National Assembly.

The resolution stipulates the object of the revision.

After at least three months it undergoes a second reading under the same conditions, unless the Council of the Republic, to which the resolution has been referred by the National Assembly, has adopted by an absolute majority the same resolution.

After the second reading, the National Assembly drafts a bill for the revision of the Constitution. This bill is submitted to Parliament and voted by a majority in the manner of an ordinary law.

It is submitted to a referendum unless it has been adopted on a second reading by the National Assembly by a majority of two-thirds

or been voted by a majority of three-fifths by each of the two houses.

No constitutional revision touching the existence of the Council of the Republic can be made without the concurrence of that Council or resort to a referendum.

The bill is promulgated as constitutional law by the President of the Republic within eight days of its adoption.

Article XCI. The constitutional committee is presided over by the President of the Republic.

It includes the President of the National Assembly, the President of the Council of the Republic, seven members elected by the National Assembly at the beginning of each annual session by proportional representation of groups and chosen outside its membership, and three members elected under the same conditions by the Council of the Republic.

The constitutional committee determines whether laws voted by the National Assembly entail a revision of the constitution.

Article XCII. In the period allowed for the promulgation of the law, the committee receives a joint request from the President of the Republic and the President of the Council of the Republic, the Council having decided by an absolute majority of its members. The committee examines the law, strives for agreement between the National Assembly and the Council of the Republic and, if it does not succeed, takes its decision within five days from its receipt of the request. This period may be reduced to two days in case of urgency.

It is competent to decide on the possibility of revision of only Titles 1 to 10 of the present Constitution.

Article XCIII. A law that, in the opinion of the committee, entails a revision of the Constitution is sent back to the National Assembly for further consideration.

If Parliament adheres to its original vote, the law may not be promulgated until the Constitution has been revised in the manner provided in Article LXXXII.

If the law is considered in conformity with the provisions of Titles 1 to 10 of the present Constitution, it is promulgated within the period provided in Article XXXVI, which period is prolonged by the addition of the periods provided in Article XCII above.

Article XCIV. In case of the occupation of all or part of the metropolitan territory by foreign forces, no procedure of revision may be started or continued.

Article XCV. The republican form of government may not be the

subject of a proposal of revision.

Title 12. Temporary Provisions.

Article XCVI. A secretariat of the National Constituent Assembly is charged with assuring the permanence of national representation until the meeting of the deputies of the new National Assembly.

Article XCVII. In case of exceptional circumstances, the deputies belonging to the National Constituent Assembly may, until the date provided in the preceding article, be called into session by the secretariat either on their own initiative or at the Government.

Article XCVIII. The National Assembly will meet with full authority on the third Thursday after the general elections. The Council of the Republic will meet on the third Tuesday after its election. The present constitution will take effect from that date.

Until the meeting of the Council of the Republic, the organization of public powers will be determined by the law of Nov. 2, 1945, the National Assembly having the attributes conferred by that law on the National Constituent Assembly.

Article XCIX. The Provisional Government formed under Article XCVIII will hand its resignation to the President of the Republic on his election by Parliament under the conditions fixed by Article XXIX above.

Article C. The secretariat of the National Constituent Assembly is charged with preparing the meeting of the Chambers created by the present constitution and providing for them, before the meeting of their respective secretariats, the meeting places and administrative facilities necessary to their functioning.

Article CI. During a period of not more than one year dating from the meeting of the National Assembly, the Council of the Republic may officially deliberate when two-thirds of its members have been proclaimed elected.

Article CII. The first Council of the Republic will be renewed entirely in the year after the renewal of the municipal councils, which shall take place within one year dating from the promulgation of the constitution.

Article CIII. Until the organization of the Economic Council and during a maximum period of three months dating from the meeting of the National Assembly, the application of Article XXV of the present constitution shall be suspended.

Article CIV. Until the meeting of the Assembly of the French Union and during a maximum period of one year dating from the meeting of

the National Assembly, the application of Article LXXI and LXXII of the present constitution shall be suspended.

Article CV. Until the promulgation of the laws provided for in Article LXXXIX of the present constitution and without prejudice to measures fixing the status of various *departments* and overseas territories, the *departments* and communes of the French Republic will be administered in conformity with existing laws except for Paragraphs 2 and 3 of Article XCVII of the law of April 5, 1884, for the application of which the police of the state shall be placed at the disposal of mayors.

Nevertheless, the acts of the prefect in his capacity as representative of the *departments* will be carried out by him under the permanent supervision of the president of the departmental assembly.

The provisions of the preceding paragraph are not applicable to the Department of the Seine.

Article CVI. The present constitution will take effect on the day of the meeting of the National Assembly. The National Assembly will meet with full authority on the third Thursday after the general elections.

Until the first meeting of the Council of the Republic, the organisation of public powers will continue to be determined by the constitutional law of October 21, 1945, the National Assembly taking the place of the Constituent Assembly.

Article CVII. The present constitution will be promulgated by the President of the Provisional Government of the Republic within two days after the date of the proclamation of the results of the referendum and in the following form: 'The National Constituent Assembly had adopted, the French people have approved and the president of the Provisional Government of the Republic promulgates the Constitution that follows: (the text of the Constitution).'

APPENDIX B

THE CONSTITUTION OF JAPAN[1]

WE, THE JAPANESE PEOPLE, acting through our duly elected representatives in the National Diet, determined that we shall secure for ourselves and our posterity the fruits of peaceful cooperation with all nations and the blessings of liberty throughout this land, and resolved that never again shall we be visited with the horrors of war through the action of government, do proclaim that sovereign power resides with the people and do firmly establish this Constitution. Government is a sacred trust of the people, the authority for which is derived from the people, the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people. This is a universal principle of mankind upon which this Constitution is founded. We reject and revoke all Constitutions, laws, ordinances, and rescripts in conflict herewith.

We, the Japanese people, desire peace for all time and are deeply conscious of the high ideals controlling human relationship, and we have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world. We desire to occupy an honoured place in an international society striving for the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth. We recognize that all peoples of the world have the right to live in peace, free from fear and want.

We believe that no nation is responsible to itself alone, but that laws of political morality are universal; and that obedience to such laws is incumbent upon all nations who would sustain their own sovereignty and justify their sovereign relationship with other nations.

We, the Japanese people, pledge our national honour to accomplish these high ideals and purposes with all our resources.

Chapter 1. The Emperor. Article I. The Emperor shall be the symbol of the state, and of the unity of the people, deriving his position from the will of the people with whom resides sovereign power.

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[1] *Official Gazette*, English Edition, Extra, November 3, 1946, Government Printing Bureau, Tokyo. Promulgated November 3, 1946.

Article II. The Imperial Throne shall be dynastic and succeeded to in accordance with the Imperial House Law passed by the Diet.

Article III. The advice and approvai of the Cabinet shall be required for all acts of the Emperor in matters of state, and the Cabinet shall be responsible therefor.

Article IV. The Emperor shall perform only such acts in matters of state as are provided for in this Constitution and he shall not have powers related to government.

The Emperor may delegate the performance of his acts in matters of state as may be provided by law.

Article V. When, in accordance with the Imperial House Law, a Regency is established, the Regent shall perform his acts in matters of state in the Emperor's name. In this case, paragraph one of the preceding article will be applicable.

Article VI. The Emperor shall appoint the Prime Minister as designated by the Diet.

The Emperor shall appoint the Chief Judge of the Supreme Court, as designated by the Cabinet.

Article VII. The Emperor, with the advice and approval of the Cabinet, shall perform the following acts in matters of state on behalf of the people:

Promulgation of amendments of the Constitution laws, cabinet orders and treaties.

Convocation of the Diet.

Dissolution of the House of Representatives.

Proclamation of general election of members of the Diet.

Attestation of the appointment and dismissal of Ministers of State and other officials as provided for by law, and of full powers and credentials of Ambassadors and Ministers.

Attestation of general and special amnesty, commutation of punishment, reprieve, and restoration of rights.

Awarding of honours.

Attestation of instruments of ratification and other diplomatic documents as provided for by law.

Receiving foreign ambassadors and ministers.

Performance of ceremonial functions.

Article VIII. No property can be given to, or received by, the Imperial House, nor any gifts can be made thereform, without the authorization of the Diet.

Chapter 2. Renunciation of War. Article IX. Aspiring sincerely

to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes.

In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the State will not be recognized.

Chapter 3. Rights and Duties of the People. Article X. The conditions necessary for being a Japanese national shall be determined by law.

Article XI. The people shall not be prevented from enjoying any of the fundamental human rights. These fundamental human rights guaranteed to the people by this Constitution shall be conferred upon the people of this and future generation as eternal and inviolate rights.

Article XII. The freedoms and rights guaranteed to the people by this Constitution shall be maintained by the constant endeavour of the people who shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare.

Article XIII. All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs.

Article XIV. All of the people are equal under the law and there shall be no discrimination in political, economic, or social relations because of race, creed, sex, social status or family origin.

Peers and peerage shall not be recognized.

No privilege shall accompany any award of honour, decoration or any distinction, nor shall any such award be valid beyond the lifetime of the individual who now holds or hereafter may receive it.

Article XV. The people have the inalienable right to choose their public officials and to dismiss them.

All public officials are servants of the whole community and not of any group thereof.

Universal adult suffrage is guaranteed with regard to the election of public officials.

In all elections, secrecy of the ballot shall not be violated. A voter shall not be answerable, publicly or privately, for the choice he has made.

Article XVI. Every person shall have the right of peaceful petition

for the redress of damage, for the removal of public officials, for the enactment, repeal or amendment of laws, ordinances or regulations and for other matters; nor shall any person be in any way discriminated against for sponsoring such a petition.

Article XVII. Every person may sue for redress as provided by law from the State or a public entity, in case he has suffered damage through illegal act of any public official.

Article XVIII. No person shall be held in bondage of any kind. Involuntary servitude, except as punishment for a crime, is prohibited.

Article XIX. Freedom of thought and conscience shall not be violated.

Article XX. Freedom of religion is guaranteed to all. No religious organization shall receive any privileges from the State, nor exercise any political authority.

No person shall be compelled to take part in any religious act, celebration, rite or practice.

The state and its organs shall refrain from religious education or any other religious activity.

Article XXI. Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed.

No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.

Article XXII. Every person shall have freedom to choose and change his residence and to choose his occupation to the extent that it does not interfere with the public welfare.

Freedom of all persons to move to a foreign country and to divest themselves of their nationality shall be inviolate.

Article XXIII. Academic freedom is guaranteed.

Article XXIV. Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis.

With regard to choice of spouse, property right, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family, laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes.

Article XXV. All people shall have the right to maintain the minimum standards of wholesome and cultured living.

In all spheres of life, the State shall use its endeavours for the promotion and extension of social welfare and security, and of public health.

Article XXVI. All people shall have the right to receive an equal education correspondent to their ability, as provided by law.

All people shall be obligated to have all boys and girls under their protection receive ordinary education as provided for by law. Such compulsory education shall be free.

Article XXVII. All people shall have the right and the obligation to work.

Standards for wages, hours, rest and other working conditions shall be fixed by law.

Children shall not be exploited.

Article XXVIII. The right of workers to organize and to bargain and act collectively is guaranteed.

Article XXIX. The right to own or to hold property is inviolable.

Property rights shall be defined by law, in conformity with the public welfare.

Private property may be taken for public use upon just compensation therefor.

Article XXX. The people shall be liable to taxation as provided by law.

Article XXXI. No person shall be deprived of life or liberty nor shall any other criminal penalty be imposed, except according to procedure established by law.

Article XXXII. No person shall be denied the right of access to the courts.

Article XXXIII. No person shall be apprehended except upon warrant issued by a competent judicial officer which specifies the offence with which the person is charged, unless he is apprehended, the offence being committed.

Article XXXIV. No person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel; nor shall he be detaind without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel.

Article XXXV. The right of all persons to be secure in their homes, papers and effects against entries, searches and seizures shall not be impaired except upon warrant issued for adequate cause and particularly describing the place to be searched and things to be seized, or except as provided by Article XXXIII.

Each search or seizure shall be made upon separate warrant issued

by a competent judicial officer.

Article XXXVI. The infliction of torture by any public officer and cruel punishments are absolutely forbidden.

Article XXXVII. In all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal.

He shall be permitted full opportunity to examine all witnesses and he shall have the right of compulsory process for obtaining witnesses on his behalf at public expense.

At all times the accused shall have the assistance of competent counsel who shall, if the accused is unable to secure the same by his own efforts, be assigned to his use by the State.

Article XXXVIII. No person shall be compelled to testify against himself.

Confessions made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence.

No person shall be convicted or punished in cases where the only proof against him is his own confession.

Article XXXIX. No person shall be held criminally liable for an act which was lawful at the time it was committed, or of which he has been acquitted, nor shall he be placed in double jeopardy.

Article XL. Any person, in case he is acquitted after he has been arrested or detained, may sue the State for redress as provided by law.

Chapter 4. The Diet. Article XLI. The Diet shall be the highest organ of State power, and shall be the sole law-making organ of the state.

Article XLII. The Diet shall consist of two Houses, namely the House of Representatives and the House of Councillors.

Article XLIII. Both houses shall consist of elected members, representative of all the people.

The number of the members of each House shall be fixed by law.

Article XLIV. The qualifications of members of both Houses and their electors shall be fixed by law. However, there shall be no discrimination because of race, creed, sex, social status, family origin, education, property or income.

Article XLV. The term of office of members of the House of Representatives shall be four years. However, the term shall be terminated before the full term is up in case the House of Representatives is dissolved.

Article XLVI. The term of office of members of the House of Coun-

cillors shall be six years, and election for half the members shall take place every three years.

Article XLVII. Electoral districts, methods of voting and other matters pertaining to the method of election of members of both Houses shall be fixed by law.

Article XLVIII. No person shall be permitted to be member of both Houses simultaneously.

Article XLIX. Members of both Houses shall receive appropriate annual payment from the national treasury in accordance with law.

Article L. Except in cases provided by law, members of both Houses shall be exempt from apprehension while the Diet is in session, and any members apprehended before the opening of the session shall be freed during the term of the session upon demand of the House.

Article LI. Members of both Houses shall not be held liable outside the House for speeches, debates, or votes cast inside the House.

Article LII. An ordinary session of the Diet shall be convoked once per year.

Article LIII. The Cabinet may determine to convoke extraordinary sessions of the Diet. When a quarter or more of the total members of either House makes the demand, the Cabinet must determine on such convocation.

Article LIV. When the House of Representatives is dissolved, there must be a general election of members of the House of Representatives within forty (40) days from the date of dissolution and the Diet must be convoked within thirty (30) days from the date of the election.

When the House of Representatives is dissolved, the House of Councillors is closed at the same time. However, the Cabinet may in time of national emergency convoke the House of Councillors in emergency session.

Measures taken at such session as mentioned in the proviso of the preceding paragraph shall be provisional and shall become null and void unless agreed to by the House of Representatives within a period of ten (10) days after the opening of the next session of the Diet.

Article LV. Each House shall judge disputes related to qualifications of its members. However, in order to deny a seat to any member it is necessary to pass a resolution by a majority of two-thirds or more of the members present.

Article LVI. Business cannot be transacted in either House unless one-third or more of the total membership is present.

All matters shall be decided, in each House, by a majority of those present, except as elsewhere provided in the Constitution, and in case of a tie, the presiding officer shall decide the issue.

Article LVII. Deliberation in each House shall be public. However, a secret meeting may be held where a majority of two-thirds or more of those members present passes a resolution therefor.

Each House shall keep a record of proceedings. This record shall be published and given general circulation, excepting such parts of proceedings of secret session as may be deemed to require secrecy.

Upon demand of one-fifth or more of the members present, votes of the members on any matter shall be recorded in the minutes.

Article LVIII. Each House shall select its own president and other officials.

Each house shall establish its rules pertaining to meetings, proceedings and internal discipline, and may punish members for disorderly conduct. However, in order to expel a member, a majority of two-thirds or more of those members present must pass a resolution thereon.

Article LIX. A bill becomes law on passage by both Houses, except as otherwise provided by the Constitution.

A bill which is passed by the House of Representatives, and upon which the House of Councillors makes a decision different from that of the House of Representatives, becomes a law when passed a second time by the House of Representatives by a majority of two-thirds or more of the members present.

The provision of the preceding paragraph does not preclude the House of Representatives from calling for the meeting of a joint committee of both Houses, provided for by law.

Failure by the House of Councillors to take final action within sixty (60) days after receipt of a bill passed by the House of Representatives, time in recess excepted, may be determined by the House of Representatives to constitute a rejection of the said bill by the House of Councillors.

Article LX. The budget must first be submitted to the House of Representatives.

Upon consideration of the budget, when the House of Councillors makes a decision different from that of the House of Representatives, and when no agreement can be reached even through a joint committee

of both Houses, provided for by law, or in the case of failure by the House of Councillors to take final action within thirty (30) days, the period of recess excluded, after the receipt of the budget passed by the House of Representatives, the decision of the House of Representatives shall be the decision of the Diet.

Article LXI. The second paragraph of the preceding article applies also to the Diet approval required for the conclusion of treaties.

Article LXII. Each House may conduct investigations in relation to government, and may demand the presence and testimony of witnesses, and the production of records.

Article LXIII. The Prime Minister and other Ministers of State may, at any time, appear in either House for the purpose of speaking on bills, regardless of whether they are members of the House or not. They must appear when their presence is required in order to give answers or explanations.

Article LXIV. The Diet shall set up an impeachment court from among the members of both Houses for the purpose of trying those judges against whom removal proceedings have been instituted.

Matters relating to impeachment shall be provided by law.

Chapter 5. The Cabinet. Article LXV. Executive power shall be vested in the Cabinet.

Article LXVI. The Cabinet shall consist of the Prime Minister, who shall be its head, and other Ministers of state as provided for by law.

The Prime Minister and other Ministers of State must be civilians.

The Cabinet, in the exercise of executive power, shall be collectively responsible to the Diet.

Article LXVII. The Prime Minister shall be designated from among the members of the Diet by a resolution of the Diet. This designation shall precede all other business.

If the House of Representatives and the House of Councillors disagree and if no agreement can be reached even through a joint committee of both houses, provided for by law, or the House of Councillors fails to make designation within ten (10) days, exclusive of the period of recess, after the House of Representatives has made designation, the decision of the House of Representatives shall be the decision of the Diet.

Article LXVIII. The Prime Minister shall appoint the Ministers of State. However, a majority of their numbers must be chosen from

among the members of the Diet.

The Prime Minister may remove Ministers of State as he chooses.

Article LXIX. If the House of Representatives passes a non-confidence resolution, or rejects a confidence resolution, the Cabinet shall resign en masse, unless the House of Representatives is dissolved within ten (10) days.

Article LXX. When there is a vacancy in the post of Prime Minister, or upon the first convocation of the Diet after a general election of members of the House of Representatives, the Cabinet shall resign en masse.

Article LXXI. In the cases mentioned in the two preceding articles, the Cabinet shall continue its functions until the time when a new Prime Minister is appointed.

Article LXXII. The Prime Minister representing the Cabinet, submits bills, reports on general national affairs and foreign relations to the Diet, and exercises control and supervision over various administrative branches.

Article LXXIII. The Cabinet, in addition to other general Administrative functions, shall perform the following functions:

Administer the law faithfully ; conduct affairs of State.

Manage foreign affairs.

Conclude treaties. However, it shall obtain prior or depending on circumstances, subsequent approval of the Diet.

Administer the civil service in accordance with standards established by law.

Prepare the budget, and present it to the Diet.

Enact cabinet orders in order to execute the provisions of this Constitution and of the law. However, it cannot include penal provisions on such cabinet orders unless authorized by such law.

Decide on general amnesty, special amnesty, commutation of punishment, reprieve, and restoration of rights.

Article LXXIV. All laws and cabinet orders shall be signed by the competent Minister of State and countersigned by the Prime Minister.

Article LXXV. The ministers of State, during their tenure of office, shall not be subject to legal action without the consent of the Prime Minister. However, the right to take that action is not impaired hereby.

Chapter 6. Judiciary.—Article LXXVI. The whole judicial dower is vested in a Supreme Court and in such inferior courts as are established by law.

No extraordinary tribunal shall be established, nor shall any organ or agency of the executive be given final judicial power.

All judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws.

Article LXXVII. The Supreme Court is vested with the rule-making power under which it determines the rules of procedure and of practice, and of matters relating to attorneys, the internal discipline of the courts and the administration of judicial affairs.

Public procurators shall be subject to the rule-making power of the Supreme Court.

The Supreme Court may delegate the power to make rules for inferior courts to such courts.

Article LXXVIII. Judges shall not be removed except by public impeachment unless judicially declared mentally or physically incompetent to perform official duties. No disciplinary action against judges shall be administered by any executive organ or agency.

Article LXXIX. The Supreme Court shall consist of a Chief Judge and such number of judges as may be determined by law; such judges excepting the Chief Judge shall be appointed by the Cabinet.

The appointment of the judges of the Supreme Court shall be reviewed by the people at the first general election of the House of Representatives following their appointment, and shall be reviewed again at the first general election of the House of Representatives after a lapse of ten (10) years, and in the same manner thereafter.

In cases mentioned in the foregoing paragraph when the majority of the voters favours the dismissal of a judge, he shall be dismissed.

Matters pertaining to review shall be prescribed by law.

The judges of the Supreme Court shall be retired upon the attainment of the age as fixed by law.

All such judges shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office.

Article LXXX. The judges of the inferior courts shall be appointed by the Cabinet from a list of persons nominated by the Supreme Court. All such judges shall hold office for a term of ten (10) years with privilege of reappointment, provided that they shall be retired upon attainment of the age as fixed by law.

The judges of the inferior courts shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office.

Article LXXXI. The Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act.

Article LXXXII. Trials shall be conducted and judgment declared publicly. Where a court unanimously determines publicity to be dangerous to public order or morals, a trial may be conducted privately, but trials of political offences, involving the press, or cases wherein the rights of people as guaranteed in Chapter 3 of this Constitution are in question, shall always be conducted publicly.

Chapter 7. Finance.—Article LXXXIII. The power to administer national finances shall be exercised as the Diet shall determine.

Article LXXXIV. No new taxes shall be imposed or existing ones modified except by law or under such conditions as law may prescribe.

Article LXXXV. No money shall be expended, nor shall the State obligate itself, except as authorized by the Diet.

Article LXXXVI. The Cabinet shall prepare and submit to the Diet for its consideration and decision a budget for each fiscal year.

Article LXXXVII. In order to provide for unforeseen deficiencies in the budget, a reserve fund may be authorized by the Diet to be expended upon the responsibility of the Cabinet.

The Cabinet must get subsequent approval of the Diet for all payments from the reserve fund.

Article LXXXVIII. All property of the Imperial Household shall belong to the State. All expenses of the Imperial Household shall be appropriated by the Diet in the budget.

Article LXXXIX. No public money or other property shall be expended or appropriated for the use, benefit or maintenance of any religious institution or association, or any charitable, educational or benevolent enterprises not under the control of public authority.

Article XC. Final accounts of the expenditures and revenues of the State shall be audited annually by a Board of Audit and submitted by the Cabinet to the Diet, together with the statement of audit, during the fiscal year immediately following the period covered.

The organization and competency of the Board of Audit shall be determined by law.

Article XCI. At regular intervals and at least annually the Cabinet shall report to the Diet and the people on the state of national finances.

Chapter 8. Local Self-Government.—Article XCII. Regulation concerning organization and operations of local public entities

shall be fixed by law in accordance with the principle of local autonomy.

Article XCIII. The local public entities shall establish assemblies as their deliberative organs, in accordance with law.

The chief executive officers of all local public entities, the members of their assemblies, and such other local officials as may be determined by law shall be elected by direct popular vote within their several communities.

Article XCIV. Local public entities shall have the right to manage their property, affairs and administration and to enact their own regulations within law.

Article XCV. A special law, applicable only to one local public entity, cannot be enacted by the Diet without the consent of the majority of the voters of the local public entity concerned, obtained in accordance with law.

Chapter 9. Amendments. Article XCVI. Amendments to this Constitution shall be initiated by the Diet, through a concurring vote of two-thirds or more of all the members of each House and shall thereupon be submitted to the people for ratification, which shall require the affirmative vote of a majority of all votes cast thereon, at a special referendum or at such election as the Diet shall specify.

Amendments when so ratified shall immediately be promulgated by the Emperor in the name of the people, as an integral part of this Constitution.

Chapter 10. Supreme Law.—Article XCVII. The fundamental human rights by this Constitution guaranteed to the people of Japan are fruits of the age-old struggle of men to be free; they have survived the many exacting tests for durability and are conferred upon this and future generations in trust, to be held for all time inviolate.

Article XCVIII. This Constitution shall be the supreme law of the nation and no law, ordinance, imperial rescript or other act of government, or part thereof, contrary to the provisions thereof, shall have legal force or validity.

The treaties concluded by Japan and established laws of nations shall be faithfully observed.

Article XCIX. The Emperor or the Regent as well as Minister of state, the members of the Diet, Judges, and other public officials have the obligation to respect and uphold this Constitution.

Chapter 11. Supplementary Provisions.—Article C. This Constitution shall be enforced as from the day when the period of six

months will have elapsed counting from the day of its promulgation.

The enactment of law necessary for the enforcement of this Constitution, the election of members of the House of Councillors and the procedure for the convocation of the Diet and other preparatory procedures necessary for the enforcement of this Constitution may be executed before the day prescribed in the preceding paragraph.

Article CI. If the House of Councillors is not constituted before the effective date of this Constitution, the House of Representatives shall function as the Diet and until such time as the House of Councillors shall be constituted.

Article CII. The term of office for half the members of the House of Councillors serving in the first term under this Constitution shall be three years. Members falling under this category shall be determined in accordance with law.

Article CIII. The Ministers of state, members of the House of Representatives and judges in office on the effective date of this Constitution, and all other public officials who occupy positions corresponding to such positions as are recognized by this Constitution shall not forfeit their positions automatically on account of the enforcement of this Constitution unless otherwise specified by law. When, however, successors are elected or appointed under the provisions of this Constitution they shall forfeit their positions as a matter of course.

APPENDIX C

Constitution of the People's Republic of China

Adopted on September 20, 1954
by the First National People's Congress
of the People's Republic of China,
at its first session

Preamble. In the year 1949, after more than a century of heroic struggle, the Chinese people, led by the Communist Party of China, finally achieved their great victory in the people's revolution against imperialism, feudalism and bureaucrat-capitalism; and so brought to an end a long history of oppression and enslavement and founded the People's Republic of China, a people's democratic dictatorship. The system of people's democracy—new democracy—of the People's Republic of China guarantees that China can in a peaceful way banish exploitation and poverty and build a prosperous and happy socialist society.

From the founding of the People's Republic of China to the attainment of a socialist society is a period of transition. During the transition the fundamental task of the state is, step by step, to bring about the socialist industrialization of the country and, step by step, to accomplish the socialist transformation of agriculture, handicrafts and capitalist industry and commerce. In the last few years our people have successfully carried out a series of large-scale struggles: the reform of the agrarian system, resistance to American aggression and aid to Korea, the suppression of counter-revolutionaries and the rehabilitation of the national economy. As a result, the necessary conditions have been created for planned economic construction and gradual transition to socialism.

The First National People's Congress of the People's Republic of China, at its first session held in Peking, the capital, solemnly adopted the Constitution of the People's Republic of China on September 20, 1954. This Constitution is based on the Common Programme of the Chinese People's Political Consultative Conference of 1949, and is an advance on it. It consolidates the gains of the Chinese people's revo-

lution and the political and economic victories won since the founding of the People's Republic of China; and moreover, it reflects the basic needs of the state in the period of transition, as well as the general desire of the people as a whole to build a socialist society.

In the course of the great struggle to establish the People's Republic of China, the people of our country forged a broad people's democratic united front, composed of all democratic classes, democratic parties and groups, and popular organizations, and led by the Communist Party of China. This people's democratic united front will continue to play its part in mobilizing and rallying the whole people in common struggle to fulfil the fundamental task of the state during the transition and to oppose enemies within and without.

All nationalities of our country are united in one great family of free and equal nations. This unity of China's nationalities will continue to gain in strength, founded as it is on ever-growing friendship and mutual aid among themselves, and on the struggle against imperialism, against public enemies of the people within the nationalities, and against both dominant-nation chauvinism and local nationalism. In the course of economic and cultural development, the state will concern itself with the needs of the different nationalities, and in matter of socialist transformation, pay full attention to the special characteristics in the development of each.

China has already built an indestructible friendship with the great Union of Soviet Socialist Republics and the People's Democracies; and the friendship between our people and peace-loving people in all other countries is growing day by day. Such friendship will be constantly strengthened and broadened. China's policy of establishing and extending diplomatic relations with all countries on the principle of equality, mutual benefit and mutual respect for each other's sovereignty and territorial integrity, which has already yielded success, will continue to be carried out. In international affairs our firm and consistent policy is to strive for the noble cause of world peace and the progress of humanity.

Chapter One

GENERAL PRINCIPLES

Article 1. The People's Republic of China is a people's democratic state led by the working class and based on the alliance of workers

and peasants.

Article 2. All power in the People's Republic of China belongs to the people. The organs through which the people exercise power are the National People's Congress and the local people's congresses.

The National People's Cengress, the local people's congresses and other organs of state practise democratic centralism.

Article 3. The People's Republic of China is a single multi-national state.

All the nationalitics are equal. Discrimination against, or oppression of, any nationality, and acts which undermine the unity of the nationalities are prohibited.

All the nationalities have freedom to use and foster the growth of their spoken and written languages, and to preserve or reform their own customs or ways.

Regional autonomy applies in areas where people of national minorities live in compact communities. National autonomous areas are inalienable parts of the People's Republic of China.

Article 4. The People's Republic of China, by relying on the organs of state and the social forces, and by means of socialist industrialization and socialist transformation, ensures the gradual abolition of systems of exploitation and the building of a socialist society.

Article 5. At present, the following basic forms of ownership of means of production exist in the People's Republic of China: state ownership, that is ownership by the whole people; co-operative ownership, that is, collective ownership by the working masses; ownership by individual working people; and capitalist ownership.

Article 6. The state sector of the economy is a socialist sector, owned by the whole people. It is the leading force in the national economy and the material basis on which the state carries out socialist transformation. The state ensures priority for the development of the state sector of the economy.

All mineral resources and waters, as well as forests, undeveloped land and other resources which the state owns by law, are the property of the whole people.

Article 7. The co-operative sector of the economy is either socialist, when collectively owned by the working masses, or semi-socialist, when a part collectively owned by the working masses. Partial collective ownership by the working masses is a transitional form by means of which individual peasants, individual handicraftsmen and other individual working people organize themselves in their advance

towards collective ownership by the working masses.

The state protects the property of the co-operatives, encourages, guides and helps the development of the co-operative sector of the economy. It regards the promotion of producers' co-operatives as the chief means for the transformation of individual farming and individual handicrafts.

Article 8. The state protects the right of peasants to own land and other means of production according to law.

The state guides and helps individual peasants to increase production and encourages them to organize producers' supply and marketing, and credit co-operatives voluntarily.

The policy of the state towards rich-peasant economy is to restrict and gradually eliminate it.

Article 9. The state protects the right of handicraftsmen and other non-agricultural individual working people to own means of production according to law.

The state guides and helps individual handicraftsmen and other non-agricultural individual working people to improve their enterprise and encourages them to organize producers', and supply and marketing co-operatives voluntarily.

Article 10. The state protects the right of capitalists to own means of production and other capital according to law.

The policy of the state towards capitalist industry and commerce is to use, restrict and transform them. The state makes use of the positive sides of capitalist industry and commerce which are beneficial to national welfare and the people's livelihood, restricts their negative sides which are not beneficial to national welfare and the people's livelihood, encourages and guides their transformation into various forms of state-capitalist economy, gradually replacing capitalist ownership with ownership by the whole people; and this it does by means of control exercised by administrative organs of state, the leadership given by the state sector of the economy, and supervision by the workers.

The state forbids capitalists to engage in unlawful activities which injure the public interest, disrupt the social-economic order, or undermine the economic plan of the state.

Article 11. The state protects the right of citizens to own lawfully-earned incomes, savings, houses and other means of life.

Article 12. The state protects the right of citizens to inherit private property according to law.

Article 13. The state may, in the public interest, buy, requisition

or nationalize land and other means of production both in cities and countryside according to provisions of law.

Article 14. The state forbids any person to use his private property to the detriment of the public interest.

Article 15. By economic planning, the state directs the growth and transformation of the national economy to bring about the constant increase of productive forces, in this way enriching the material and cultural life of the people and consolidating the independence and security of the country.

Article 16. Work is a matter of honour for every citizen of the People's Republic of China who is able to work. The state encourages citizens to take an active and creative part in their work.

Article 17. All organs of state must rely on the masses of the people, constantly maintain close contact with them, heed their opinions and accept their supervision.

Article 18. All servants of the state must be loyal to the people's democratic system, observe the Constitution and the law and strive to serve the people.

Article 19. The People's Republic of China safeguards the people's democratic system, suppresses all treasonable and counter-revolutionary activities and punishes all traitors and counter-revolutionaries.

The state deprives feudal landlords and bureaucrat-capitalists of political rights for a specific period of time according to law; at the same time it provides them with a way to earn a living, in order to enable them to reform through work and become citizens who earn their livelihood by their own labour.

Article 20. The armed forces of the People's Republic of China belong to the people; their duty is to safeguard the gains of the people's revolution and the achievements of national construction, and to defend the sovereignty, territorial integrity and security of the country.

Chapter Two

THE STATE STRUCTURE

Section 1. The National People's Congress

Article 21. The National People's Congress is the highest organ of state authority in the People's Republic of China.

Article 22. The National People's Congress is the only legislative authority in the country.

Article 23. The National People's Congress is composed of deputies elected by provinces, autonomous regions, municipalities directly under the central authority, the armed forces and Chinese resident abroad.

The number of deputies to the National People's Congress, including those representing national minorities; and the manner of their election, are prescribed by electoral law.

Article 24. The National People's Congress is elected for a term of four years.

Two months before the term of office of the national People's Congress expires, its Standing Committee must complete the election of deputies to the succeeding National People's Congress. Should exceptional circumstances arise preventing such an election, the terms of office of the sitting National People's Congress may be prolonged until the first session of the succeeding National People's Congress.

Article 25. The National People's Congress meets once a year, convened by its Standing Committee. It may also be convened whenever its Standing Committee deems this necessary or one-fifth of the deputies so propose.

Article 26. When the National People's Congress meets, it elects a presidium to conduct its sittings.

Article 27. The National People's Congress exercises the following functions and powers:

(1) to amend the Constitution;

(2) to enact laws;

(3) to supervise the enforcement of the Constitution;

(4) to elect the Chairman and the Vice-Chairman of the People's Republic of China;

(5) to decide on the choice of the Premier of the State Council upon recommendation by the Chairman of the People's Republic of China, and of the component members of the State Council upon recommendation by the Premier;

(6) to decide on the choice of the Vice-Chairmen and other members of the Council of National Defence upon recommendation by the Chairman of the People's Republic of China;

(7) to elect the President of the Supreme People's Court;

(8) to elect the Chief Procurator of the Supreme People's Procuratorate;

(9) to decide on the national economic plans;

(10) to examine and approve the state budget and the financial report;

(11) to ratify the status and boundaries of provinces, autonomous regions, and municipalities directly under the central authority;

(12) to decide on general amnesties;

(13) to decide on questions of war and peace; and

(14) to exercise such other functions and powers as the National People's Congress considers necessary.

Article 28. The National People's Congress has power to remove from office:

(1) the Chairman and the Vice-Chairman of the People's Republic of China;

(2) the Premier and Vice-Premiers, Ministers, Heads of Commissions and the Secretary-General of the State Council;

(3) the Vice-Chairmen and other members of the Council of National Defence;

(4) the President of the Supreme People's Court; and

(5) the Chief Procurator of the Supreme People's Procuratorate.

Article 29. Amendments to the Constitution require a two-thirds majority vote of all the deputies to the National People's Congress.

Laws and other bills require a simple majority vote of all the deputies to the National People's Congress.

Article 30. The Standing Committee of the National People's Congress is a permanently acting body of the National People's Congress.

The Standing Committee is composed of the following members, elected by the National People's Congress:

the Chairman;
the Vice-Chairman;
the Secretary-General; and
other members.

Article 31. The Standing Committee of the National People's Congress exercises the following functions and powers:

(1) to conduct the election of deputies to the National People's Congress;

(2) to convene the National People's Congress;

(3) to interpret the laws;

(4) to adopt decrees;

(5) to supervise the work of the State Council, the Supreme

People's Court and the Supreme People's Procuratorate;

(6) to annul decisions and orders of the State Council which contravene the Constitution, laws or decrees;

(7) to revise or annul inappropriate decisions issued by the government authorities of provinces, autonomous regions, and municipalities directly under the central authority;

(8) to decide on the appointment or removal of any Vice-Premier, Minister, Head of Commission or the Secretary General of the State Council when the National People's Congress is not in session;

(9) to appoint or remove the Vice-Presidents, judges, and other members of the Judical Committee of the Supreme People's Court;

(10) to appoint or remove the Deputy Chief Procurators, procurators, and other members of the Procuratorial Committee of the Supreme People's Procuratorate;

(11) to decide on the appointment or recall of plenipotentiary representatives to foreign states;

(12) to decide on the ratification or abrogation of treaties concluded with foreign states;

(13) to institute military, diplomatic and other special titles and ranks;

(14) to institute and decide on the award of state orders, medals and titles of honour;

(15) to decide on the granting of pardons;

(16) to decide, when the National People's Congress is not in session, on the proclamation of a state of war in the event of armed attack on the country or in fulfilment of international treaty obligations concerning common defence against aggression;

(17) to decide on general or partial mobilization;

(18) to decide on the enforcement of martial law throughout the country or in certain areas; and

(19) to exercise such other functions and powers as are vested in it by the National People's Congress.

Article 32. The Standing Committee of the National People's Congress exercises its functions and powers until a new Standing Committee is elected by the succeeding National People's Congress.

Article 33. The Standing Committee of the National People's Congress is responsible to the National People's Congress and report to it.

The National People's Congress has power to recall members of its Standing Committee.

Article 34. The National People's Congress establishes a Nationalities Committee, a Bills Committee, a Budget Committee, a Credentials Committee and other necessary committees.

The Nationalities Committee and the Bills Committee are under the direction of the Standing Committee of the National People's Congress when the National People's Congress is not in session.

Article 35. The National People's Congress, or its Standing Committee if the National People's Congress is not in session, may, if nccessary, appoint commissions of inquiry for the investigation of specific questions.

All organs of state, people's organizations and citizens concerned are obliged to supply necessary information to these commissions when they conduct investigations.

Article 36. Deputies to the National People's Congress have the right to address questions to the State Council, or to the Ministries and Commissions of the State Council, which are under obligation to answer.

Article 37. No deputy to the National People's Congress may be arrested or placed on trial without the consent of the National People's Congress or, when the National People's Congress is not in session, of its Standing Committee.

Article 38. Deputies to the National People's Congress are subject to the supervision of the units which elect them. These electoral units have power to replace at any time the deputies they elect, according to the procedure prescribed by law.

Section II. The Chairman of the People's Republic of China

Article 39. The Chairman of the People's Republic of China is elected by the National People's Congress. Any citizen of the People's Republic of China who has the right to vote and stand for election and has reached the age of thirty-five is eligible for election as Chairman of the People's Republic of China.

The term of office of the Chairman of the People's Republic of China is four years.

Article 40. The Chairman of the People's Republic of China, in pursuance of decisions of the National People's Congress or the Standing Committee of the National People's Congress, promulgates laws and decrees; appoints or removes the Premier, Vice-Premiers, Minis-

ters, Heads of Commissions and the Secretary-General of the State Council; appoints or removes the Vice-Chairmen and other members of the Council of National Defence; confers state orders, medals and titles of honour; proclaims general amnesties and grants pardons; proclaims martial law; proclaims a state of war; and orders mobilization.

Article 41. The Chairman of the People's Republic of China represents the People's Republic of China in its relations with foreign States, receives foreign diplomatic representatives and, in pursuance of decisions of the standing Committee of the National People's Congress, appoints or recalls plenipotentiary representatives to foreign states and ratifies treaties concluded with foreign states.

Article 42. The Chairman of the People's Republic of China commands the armed forces of the country, and is Chairman of the Council of National Defence.

Article 43. The Chairman of the People's Republic of China, whenever necessary, convenes a Supreme State Conference and acts as its chairman.

The Vice-Chairman of the People's Republic of China, the Chairman of the Standing Committee of the National People's Congress, the Premier of the State Council and other persons concerned take part in the Supreme State Conference.

The Chairman of the People's Republic of China submits the views of the Supreme State Conference on important affairs of state to the National People's Congress, its Standing Committee, the State Council, or other bodies concerned for their consideration and decision.

Article 44. The Vice-Chairman of the People's Republic of China assists the Chairman in his work. The Vice-Chairman may exercise such part of the functions and powers of the Chairman as the Chairman may entrust to him.

The provisions of Article 39 of the Constitution governing the election and term of office of the Chairman of the People's Republic of China apply also to the election and term of office of the Vice-Chairman of the People's Republic of China.

Article 45. The Chairman and the Vice-Chairman of the People's Republic of China exercise their functions and powers until the new Chairman and Vice-Chairman elected by the succeeding National People's Congress take office.

Article 46. Should the Chairman of the People's Republic of China be incapacitated for a prolonged period by reason of health,

the functions of Chairman shall be exercised by the Vice-Chairman.

Should the office of Chairman of the People's Republic of China fall vacant, the Vice-Chairman succeeds to the office of Chairman.

Section III. The State Council

Article 47. The State Council of the People's Republic of China, that is, the Central People's Government, is the executive organ of the highest state authority; it is the highest administrative organ of state.

Article 48. The State Council is composed of the following members:

the Premier;
the Vice-Premiers;
the Minister;
the Heads of Commissions; and
the Secretary-General.

The organization of the State Council is determined by law.

Article 49. The State Council exercises the following functions and powers:

(1) to formulate administrative measures, issue decisions and orders and verify their execution, in accordance with the Constitution, laws and decrees;

(2) to submit bills to the National People's Congress or its Standing Committee;

(3) to co-ordinate and lead the work of Ministries and Commissions;

(4) to co-ordinate and lead the work of local administrative organs of state throughout the country;

(5) to revise or annul inappropriate orders and directives issued by Ministers or by Heads of Commissions;

(6) to revise or annul inappropriate decisions and orders issued by local administrative organs of state;

(7) to put into effect the national economic plans and provisions of the state budget;

(8) to control foreign and domestic trade;

(9) to direct cultural, educational and public health work;

(10) to administer affairs concerning the nationalities;

(11) to administer affairs concerning Chinese resident abroad;

(12) to protect the interests of the state, to maintain public order and to safeguard the rights of citizens;

(13) to direct the conduct of external affairs;

(14) to guide the building up of the defence forces;

(15) to ratify the status and boundaries of autonomous *chou*, counties, autonomous counties, and municipalities;

(16) to appoint or remove administrative personnel according to provisions of law; and

(17) to exercise such other functions and powers as are vested in it by the National People's Congress or its Standing Committee.

Article 50. The Premier directs the work of the State Council and presides over its meetings.

The Vice-Premiers assist the Premier in his work.

Article 51. The Ministers and Heads of Commissions direct the work of their respective departments. They may issue orders and directives within the jurisdiction of their respective departments and in accordance with laws and decrees, and decisions and orders of the State Council.

Article 52. The State Council is responsible to the National People's Congress and reports to it; or, when the National People's Congress is not in session, to its Standing Committee.

Section IV. The Local People's Congresses and Local People's Councils

Article 53. The administrative division of the People's Republic of China is as follows:

(1) The country is divided into provinces, autonomous regions, and municipalities directly under the central authority;

(2) Provinces and autonomous regions are divided into autonomous *chou*, counties, autonomous counties, and municipalities; and

(3) Counties and autonomous counties are divided into *hsiang*, nationality *hsiang*, and towns.

Municipalities directly under the central authority and other large municipalities are divided into districts. Autonomous *chou* are divided into counties, autonomous counties, and municipalities.

Autonomous regions, autonomous *chou* and autonomous counties are all national autonomous areas.

Article 54. People's congresses and people's councils are established in provinces, municipalities directly under the central authority, counties, municipalities, municipal districts, *hsiang*, nationality *hsiang*, and towns.

Organs of self-government are established in autonomous regions, autonomous *chou* and autonomous counties. The organization and work of organs of self-government are specified in Section V of Chapter Two of the Constitution.

Article 55. Local people's congresses at all levels are the organs of government authority in their respective localities.

Article 56. Deputies to the people's congresses of provinces, municipalities directly under the central authority, counties, and municipalities divided into districts are elected by the people's congresses of the next lower level; deputies to the people's congresses of municipalities not divided into districts, municipal districts, *hsiang*, nationality *hsiang*, and towns are directly elected by the voters.

The number of deputies to local people's congresses and the manner of their election are prescribed by electoral law.

Article 57. The term of office of the provincial people's congresses is four years. The term of office of the people's congresses of municipalities directly under the central authority, counties, municipalities, municipal districts, *hsiang*, nationality *hsiang*, and towns is two years.

Article 58. The local people's congresses at every level ensure the observance and execution of laws and decrees in their respective administrative areas; draw up plans for local economic and cultural development and for public work; examine and approve local budgets and financial reports; protect public property; maintain public order; safeguard the rights of citizens and the equal rights of national minorities.

Article 59. The local people's congresses elect, and have power to recall, members of the people's councils at corresponding levels.

The people's congresses at county level and above elect, and have power to recall, the presidents of people's courts at corresponding levels.

Article 60. The local people's congresses adopt and issue decisions within the limits of the authority prescribed by law.

The people's congresses of nationality *hsiang* may, within the limits of the authority prescribed by law, take specific measures appropriate to the characteristics of the nationalities concerned.

The local people's congresses have power to revise or annul inappropriate decisions and orders issued by people's councils at corresponding levels.

The people's congresses at county level and above have power to revise or annul inappropriate decisions issued by people's congresses at the next lower level as well as inappropriate decisions and orders

issued by people's councils at the next lower level.

Article 61. Deputies to the people's congresses of provinces, municipalities directly under the central authority, counties, and municipalities divided into districts are subject to supervision by the units which elect them; deputies to the people's congresses of municipalities not divided into districts, municipal districts, *hsiang*, nationality *hsiang*, and towns are subject to supervision by their electorates. The electoral units and electorates which elect the deputies to the local people's congresses have power at any time to recall their deputies according to the procedure prescribed by law.

Article 62. Local people's councils, that is, local people's governments, are the executive organs of local people's congresses at corresponding levels, and are the administrative organs of state in their respective localities.

Article 63. A local people's council is composed, according to its level, of the provincial governor and deputy provincial governors; or the mayor and deputy mayors; or the county head and deputy county heads; or the district head and deputy district heads; or the *hsiang* head and deputy *hsiang* heads; or the town head and deputy town heads, as the case may be; together with council members.

The term of office of a local people's council is the same as that of the people's congress at corresponding level.

The organization of local people's councils is determined by law.

Article 64. The local people's councils administer their respective areas within the limits of the authority prescribed by law.

The local people's councils carry out the decisions issued by people's congresses at corresponding levels and decisions and orders issued by administrative organs of state at higher levels.

The local people's councils issue decisions and orders within the limits of the authority prescribed by law.

Article 65. The people's councils at county level and above direct the work of all their subordinate departments and of people's councils at lower levels, as well as appoint or remove personnel of organs of state according to provisions of law.

The people's councils at county level and above have power to suspend the carrying out of inappropiate decisions of people's congresses at the next lower level; and to revise or annul inappropriate orders and directives issued by their subordinate departments, and inappropriate decisions and orders issued by people's councils at lower levels.

Article 66. The local people's councils are responsible to the people's congresses at corresponding levels and to the administrative organs of state at the next higher level, and report to them.

The local people's councils throughout the country are administrative organs of state, and are subordinate to and under the co-ordinating direction of the State Council.

Section V. The Organs of Self-government of National Autonomous Areas

Article 67. The organs of self-government of all autonomous regions, autonomous *chou* and autonomous counties are formed in accordance with the basic principles governing the organization of local organs of state as specified in Section IV of Chapter Two of the Constitution. The form of each organ of self-government may be determined in accordance with the wishes of the majority of the people of the nationality or nationalities enjoying regional autonomy in a given area.

Article 68. In all autonomous regions, autonomous *chou* and autonomous counties where a number of nationalities live together, each nationality is entitled to appropriate representation on the organs of self-government.

Article 69. The organs of self-government of all autonomous regions, autonomous *chou* and autonomous counties exercise the functions and powers of local organs of state as specified in Section IV of Chapter Two of the Constitution.

Article 70. The organs of self-government of all autonomous regions, autonomous *chou* and autonomous counties exercise autonomy within the limits of the authority prescribed by the Constitution and the law.

The organs of self-government of all autonomous regions, autonomous *chou* and autonomous counties administer their own local finances within the limits of the authority prescribed by law.

The organs of self-government of all autonomous regions, autonomous *chou* and autonomous counties organize their local public security forces in accordance with the military system of the state.

The organs of self-government of all autonomous regions, autonomous *chou* and autonomous counties may draw up statutes governing the exercise of autonomy or separate regulations suited to the political, economic and cultural characteristics of the nationality or nationalities in a given area, which statutes and regulations are

subject to endorsement by the Standing Committee of the National People's Congress.

Article 71. In performing their duties, organs of self-government of all autonomous regions, autonomous *chou* and autonomous counties employ the spoken and written language or languages commonly used in the locality.

Article 72. The higher organs of state should fully safeguard the right of organs of self-government of all autonomous regions, autonomous *chou* and autonomous counties to exercise autonomy, and should assist the various national minorities in their political, economic and cultural development.

Section VI. The People's Courts and the People's Procuratorate

Article 73. In the People's Republic of China judicial authority is exercised by the Supreme People's Court, local people's courts and special people's courts.

Article 74. The term of office of the President of the Supreme People's Court and presidents of local people's courts is four years.

The organization of people's courts is determined by law.

Article 75. The system of people's assessors applies, in accordance with law, to judicial proceedings in the people's courts.

Article 76. Cases in the people's courts are heard in public unless otherwise provided for by law. The accused has the right to defence.

Article 77. Citizens of all nationalities have the right to use their own spoken and written languages in court proceedings. The people's courts are to provide interpretation for any party unacquainted with the spoken or written language commonly used in the locality.

In an area where people of national minorities live in compact communities or where a number of nationalities live together, hearings in people's courts are conducted in the language commonly used in the locality and judgments, notices and all other documents of the people's courts are made public in such language.

Article 78. In administering justice the people's courts are independent, subject only to the law.

Article 79. The Supreme People's Court is the highest judicial organ.

The Supreme People's Court supervises the judicial work of local people's courts and special people's courts; people's courts at higher

levels supervise the judicial work of people's courts at lower levels.

Article 80. The Supreme People's Court is responsible to the National People's Congress and reports to it; or, when the National People's Congress is not in session, to its Standing Committee. Local people's courts are responsible to the local people's congresses at corresponding levels and report to them.

Article 81. The Supreme People's Procuratorate of the people's Republic of China exercises procuratorial authority over all departments of the State Council, all local organs of state, persons working in organs of state, and citizens, to ensure observance of the law. Local organs of the people's procuratorate and special people's procuratorates exercise procuratorial authority within the limits prescribed by law.

Local organs of the people's procuratorate and the special People's procuratorates work under the leadership of the people's procuratorates at higher levels, and all work under the co-ordinating direction of the Supreme People's Procuratorate.

Article 82. The term of office of the Chief Procurator of the Supreme People's Procuratorate is four years.

The organization of people's procuratorates is determined by law.

Article 83. In the exercise of their authority local organs of the people's procuratorate are independent and are not subject to interference by local organs of state.

Article 84. The Supreme People's Procuratorate is responsible to the National People's Congress and reports to it; or, when the National People's Congress is not in session, to its Standing Committee.

Chapter Three

FUNDAMENTAL RIGHTS AND DUTIES OF CITIZENS

Article 85. Citizens of the People's Republic of China are equal before the law.

Article 86. Citizens of the People's Republic of China who have reached the age of eighteen have the right to vote and stand for election whatever their nationality, race, sex, occupation, social origin, religious belief, education, property status, or length of residence, except insane persons and persons deprived by law of the right to vote and stand for election.

Women have equal rights with men to vote and stand for election.

Article 87. Citizens of the People's Republic of China enjoy freedom of speech, freedom of the press, freedom of assembly, freedom of association, freedom of procession and freedom of demonstration. The state guarantees to citizens enjoyment of these freedoms by providing the necessary material facilities.

Article 88. Citizens of the People's Republic of China enjoy freedom of religious belief.

Article 89. Freedom of the person of citizens of the People's Republic of China is inviolable. No citizen may be arrested except by decision of a people's court or with the sanction of a people's procurate.

Article 90. The homes of citizens of the People's Republic of China are inviolable, and privacy of correspondence is protected by law.

Citizens of the People's Republic of China enjoy freedom of residence and freedom to change their residence.

Article 91. Citizens of the People's Republic of China have the right to work. To guarantee enjoyment of this right, the state, by planned development of the national economy, gradually creates more employment, and better working conditions and wages.

Article 92. Working people in the People's Republic of China have the right to rest and leisure. To guarantee enjoyment of this right, the state prescribes working hours and holidays for workers and office employees; at the same time it gradually expands material facilities to enable working people to rest and build up their health.

Article 93. Working people in the People's Republic of China have the right to material assistance in old age, and in case of illness or disability. To guarantee enjoyment of this right, the state provides social insurance, social assistance and public health services and gradually expands these facilities.

Article 94. Citizens of the People's Republic of China have the right to education. To guarantee enjoyment of this right, the state establishes and gradually extends the various types of schools and other cultural and educational institutions.

The state pays special attention to the physical and mental development of young people.

Article 95. The People's Republic of China safeguards the freedom of citizens to engage in scientific research, literary and artistic creation and other cultural pursuits. The state encourages and assists creative work in science, education, literature, art and other cultural pursuits.

Article 96. Women in the People's Republic of China enjoy equal rights with men in all spheres of political, economic, cultural, social and domestic life.

The state protects marriage, the family, and the mother and child.

Article 97. Citizens of the People's Republic of China have the right to bring complaints against any person working in organs of state for transgression of law or neglect of duty by making a written or verbal statement to any organ of state at any level. People suffering loss by reason of infringement by persons working in organs of state of their rights as citizens have the right to compensation.

Article 98. The People's Republic of China protects the proper rights and interests of Chinese resident abroad.

Article 99. The People's Republic of China grants the right of asylum to any foreign national persecuted for supporting a just cause, for taking part in the peace movement or for engaging in scientific activity.

Article 100. Citizens of the People's Republic of China must abide by the Constitution and the law, uphold discipline at work, keep public order and respect social ethics.

Article 101. The public property of the People's Republic of China is sacred and inviolable. It is the duty of every citizen to respect and protect public property.

Article 102. It is the duty of citizens of the People's Republic of China to pay taxes according to law.

Article 103. It is the sacred duty of every citizen of the People's Republic of China to defend the homeland.

It is an honourable duty of citizens of the People's Republic of China to perform military service according to law.

Chapter Four

NATIONAL FLAG, NATIONAL EMBLEM, CAPITAL

Article 104. The National flag of the People's Republic of China is a red flag with five stars.

Article 105. The national emblem of the People's Republic of China is: in the centre, Tien An Men under the light of five stars, framed with ears of grain, and with a cogwheel at the base.

Article 106. The capital of the People's Republic of China is Peking.

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